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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 285 (GBD)

5 LAURENCE F. DOUD III,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.  
9 January 27, 2022  
9:45 a.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge  
13 -and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
17 Southern District of New York

18 BY: NICOLAS T. ROOS

ALEXANDRA ROTHMAN

THOMAS S. BURNETT

Assistant United States Attorneys

19 ROBERT C. GOTTLIEB

20 DERRELLE M. JANNEY

PAUL R. TOWNSEND

Attorneys for Defendant

21 Also Present: Sunny Drescher

22 Jacqueline Hauck

Paralegal Specialists

23 Special Agent George Burdzy, DEA

24 Investigator Kathleen Whitmore, DEA

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(Trial resumed; jury not present)

THE COURT: Mr. Roos, are we waiting for the rest of your team?

MR. ROOS: I think, I know Ms. Rothman is on her way up, but Mr. Burnett is not going to be coming up until a little bit later.

So, just a few things, your Honor. I understand they brought their character witness who will testify. By the way, we're going to rest. We realize there is one stipulation that was previously offered but not the signed version, so we'll offer the signed version. Then we'll rest.

I understand they have a character witness. I understand they also have two stipulations. One of them is the one I objected to at length yesterday. You have heard us, so I'm not going to belabor the colloquy on that. The other is this attorneys' fees thing.

THE COURT: Which one?

MR. ROOS: They issued a subpoena to get records of the attorneys' fees paid. My recommendation, if it is okay with defense counsel, is we get the morning started so the jury doesn't wait, and use the period in between when this witness testifies and the expert testifies to sort of work out our issues so we're not wasting time. If that's okay with everyone.

THE COURT: You are saying that's the subject of a

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1 possible stip?

2 MR. ROOS: They have a business certification that  
3 authenticates the invoices, and they also are going to have a  
4 business certification that authenticates that spreadsheet. We  
5 don't object to the authentication. On the legal fees, we have  
6 an objection as to the relevance, which your Honor can rule on  
7 in the long break between the character witness and the expert.

8 THE COURT: All right.

9 MR. ROOS: That would be my proposal. We have a very  
10 brief rebuttal witness who is either here or going to be here  
11 this morning so he'll be ready to go, as soon as the defense  
12 witness is off. I think everyone thinks we'll be able to  
13 finish today.

14 THE COURT: At what point do you anticipate that  
15 you're going to present a rebuttal witness?

16 MR. ROOS: What's the point?

17 THE COURT: At what point?

18 MR. ROOS: Well --

19 THE COURT: What are you going to rebut?

20 MR. ROOS: Just that one spreadsheet about terminated  
21 customers. So, sequentially he should go after they offer it.  
22 But, I haven't talked to the rest of the team. If some reason  
23 your Honor wanted to put them out of order or something, I  
24 think he'll be here by like 11 or something, if he's not  
25 already here.

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1 THE COURT: You think he is going to rebut whose  
2 testimony?

3 MR. ROOS: He is going to rebut the offer of the  
4 spreadsheet which may be by a declaration or something.

5 THE COURT: Okay. Mr. Gottlieb, the government is  
6 resting. Do you want to formally make your motion now? As I  
7 indicated, I am going to reserve decision and I'll give you a  
8 full opportunity to argue it either orally and/or in writing.

9 MR. GOTTLIEB: I appreciate that. We heard that was  
10 your plan. What we'd like to do is after they rest, or  
11 whenever you want me to do it, we do ask that both counts be  
12 dismissed pursuant to Rule 29. And with the Court's  
13 permission, we will be filing a submission in support of the  
14 Rule 29 motion, I believe it will be certainly done by  
15 afternoon tomorrow.

16 THE COURT: All right. So I'll consider that to have  
17 been made at the close of the government's case, and I'll  
18 consider a renewed or we can renew it at the close of all of  
19 the evidence and then I'll give you an opportunity to submit on  
20 that issue. I'll reserve decision.

21 MR. GOTTLIEB: Thank you. And we've done our best and  
22 we will have the witness available at 1:30, your Honor, to  
23 testify.

24 THE COURT: All right. That's helpful.

25 MR. GOTTLIEB: I don't believe he is going to be even

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1 as lengthy as the government's expert. And then we do just  
2 have the two certified records. I provided to chambers, your  
3 Honor, we already received one of the certifications with  
4 regard to the legal fees.

5 THE COURT: You said you submitted something to me?

6 MR. GOTTLIEB: Just this morning we received the  
7 certification.

8 THE COURT: All right. I have two documents here.  
9 One from Larry Houck and one from Dominic Pagnotta.

10 MR. GOTTLIEB: The one that has been received by us  
11 and executed is the Larry Houck legal fees exhibit, your Honor.

12 THE COURT: Okay.

13 MR. ROOS: What's the other one?

14 MR. GOTTLIEB: The other one is the certification for  
15 the chart which has been discussed quite a bit. We're waiting  
16 for the e-mail, the copy which will then be sent to us of the  
17 certification to allow us to introduce Defense Exhibit A82 in  
18 evidence.

19 THE COURT: Now, I have the Larry Houck business  
20 record certification is signed. The business record  
21 certification that I have from Pagnotta is not signed.

22 MR. GOTTLIEB: We've been in touch with them. We're  
23 told we should be receiving it beamed to us at any moment.

24 THE COURT: Okay. So how do you want to proceed in  
25 terms of -- you have your character witness that you want to

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1 put on, and then we're going to adjourn until 1:30 for your  
2 other witness?

3 MR. GOTTLIEB: I think that makes the most sense, your  
4 Honor.

5 THE COURT: Okay.

6 MR. ROOS: If these things are signed, they can offer  
7 them, I don't know if you are going to read any of them.

8 THE COURT: One isn't signed yet.

9 MR. ROOS: Right. To fill in the time.

10 THE COURT: We can do that too.

11 MR. GOTTLIEB: Whatever -- this morning, your Honor,  
12 I'm more than happy to ask that each one be received in  
13 evidence, and just indicate what it is and leave it at that.  
14 I'm not --

15 THE COURT: What's the government's position?

16 MR. ROOS: So, I haven't seen the Pagnotta one.  
17 Assuming what I think it is, and we're just waiting on a  
18 signature. You heard our objection yesterday. You don't agree  
19 with us, so we're not going to fight this any further. And  
20 honestly, if the representation is this guy is in the process  
21 of signing and scanning them, I'm okay with them just offering  
22 it and we can substitute it with the signed version or  
23 something.

24 THE COURT: Look, in terms of our timing, you can do  
25 it right away, you can do it after your first witness, you can

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1 do it just before your second witness or you can do it after  
2 your second witness.

3 MR. GOTTLIEB: I'm prepared to do it right at the  
4 outset and then we can call the character witness, if that's  
5 okay with your Honor.

6 THE COURT: Okay.

7 MR. ROOS: It is the legal one, the Houck one, that we  
8 just have a relevancy objection to why it matters that they  
9 paid the bills.

10 THE COURT: Okay. Go ahead.

11 MR. ROOS: The question is, like, what's the relevance  
12 of the amount of money they paid to lawyers to do this legal  
13 work, and in particular, what's the relevance of the detailed  
14 invoices which are partially redacted and sort of confusing  
15 because they're in lawyer speak.

16 THE COURT: Let me just read this. You have to  
17 explain to me what this evidence is.

18 MR. ROOS: On that it is probably best for  
19 Mr. Gottlieb to speak to what the evidence is. It's his  
20 evidence.

21 THE COURT: Mr. Gottlieb?

22 MR. GOTTLIEB: Yes.

23 THE COURT: What is this evidence?

24 MR. GOTTLIEB: Your Honor, you will recall -- if you  
25 don't recall, I will refresh recollection -- that the

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1 government in its case in chief has introduced Government  
2 Exhibits 31 and 32. 31 and 32, your Honor, 33. 31 and 33.  
3 Those are the communications, letters from the law firm, Larry  
4 Houck's law firm that was requested and retained by RDC and  
5 Larry Doud to investigate, analyze its compliance program.  
6 That's what they do. They're experts in the DEA and compliance  
7 programs. So, the government introduced the results of the  
8 work.

9 THE COURT: What exhibit is that?

10 MR. GOTTLIEB: 31 and 33.

11 THE COURT: Can I see those two exhibits? 31 and 33?

12 MR. GOTTLIEB: Yes, your Honor.

13 THE COURT: So 31 and 33. So, let me make sure I  
14 understand the nature of these documents and what you want to  
15 offer. These documents are in evidence are the reports that  
16 were done by the law firm with regard to an evaluation of the  
17 policies and procedures with regard to compliance.

18 MR. GOTTLIEB: Yes.

19 THE COURT: It is not an evaluation of whether or not  
20 those policies and procedures were followed.

21 MR. GOTTLIEB: Correct. At the request of Larry Doud  
22 and RDC, they requested Hyman Phelps & McNamara, the law firms  
23 in both 31 and 33, same law firm, one, to engage in the  
24 evaluation of its own RDC's compliance program, and then to  
25 make any recommendations, if that's their conclusion, as to



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1 what, if any, recommendations they would make for improvement.

2 THE COURT: Okay.

3 MR. GOTTLIEB: Those were government exhibits. The  
4 relevance is, so the government introduces that. They, I  
5 assume, are going to say, therefore, Larry Doud was aware of  
6 certain deficiencies and whatnot.

7 The flip side of that, your Honor, and the relevance,  
8 therefore, is that Larry Doud and RDC reached out to this law  
9 firm, requested that they conduct an independent evaluation,  
10 and to give recommendations, warts and all, and the fact  
11 that --

12 THE COURT: I don't see that. That's why I asked the  
13 first question. The reports are not about warts. They're  
14 about what they did or what they didn't do. It is about what  
15 the procedure was, isn't it? And nobody seems to disagree as  
16 to what the procedures that was supposed to have been followed.  
17 Right?

18 MR. GOTTLIEB: No. But that's not the intent here.  
19 RDC reached out for a law firm to evaluate the procedures that  
20 were in place, and based on their expertise, to make  
21 recommendations for improvements because of deficiencies that  
22 the law firm as experts found in their evaluation.

23 THE COURT: That's why I asked. Because I didn't  
24 understand it to be an evaluation of whether or not RDC was  
25 complying with its procedures.

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1 MR. GOTTLIEB: Not only complying with its  
2 procedures --

3 THE COURT: I couldn't hear you.

4 MR. GOTTLIEB: The issue isn't whether or not they're  
5 complying with their procedures, which is an issue in this  
6 trial.

7 THE COURT: But that's not what they were  
8 investigating or hired to do.

9 MR. GOTTLIEB: That's absolutely correct. What they  
10 were investigating is the procedures, the policies you do have  
11 are insufficient in this way, and therefore you should make  
12 those changes. The government obviously wanted the jury to  
13 know that Larry Doud and RDC were put on notice, just as  
14 shorthand, of certain deficiencies.

15 THE COURT: That doesn't go to the evidence or lack of  
16 evidence with regard to whether or not they made these changes.

17 MR. GOTTLIEB: That's correct. That's correct. But,  
18 what we are simply addressing on our case and putting in, your  
19 Honor, just the amount of fees that RDC and Larry Doud took out  
20 of their pocket to pay for an investigation evaluation, an  
21 internal one, not even knowing where it would lead, and that  
22 they were prepared and they did spend \$34,135 for an  
23 independent investigation.

24 It becomes relevant because it goes to intent. Larry  
25 Doud's thinking, his intent. Somebody who is -- not to argue

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1 for the government, but if the government is saying he wasn't  
2 interested in compliance, he was trying to hide doing all these  
3 terrible things, the jury should be able to consider that Larry  
4 Doud himself reached out for an independent evaluation, and  
5 they're saying he was only interested in money and greed. Yet  
6 he was willing to pay money for this review of the compliance  
7 program to the tune of \$34,135.

8 THE COURT: You said one thing a couple seconds ago.  
9 You said that RDC and Larry Doud paid for this. In what way  
10 are you saying that Larry Doud personally paid for this?

11 MR. GOTTLIEB: If you look at the records, it's  
12 actually interesting. But clearly this was RDC. The invoices  
13 were directed to Larry Doud.

14 THE COURT: I'm sorry. I'm not sure what that means.

15 MR. GOTTLIEB: I think if you look at the invoices, it  
16 is addressed to --

17 THE COURT: I don't have your exhibit in front of me.

18 MR. GOTTLIEB: I thought you did, I'm sorry.

19 THE COURT: I don't know what you're referring to.  
20 All I have is the certification. I don't have the exhibit.

21 MR. GOTTLIEB: This is the exhibit that's directed to  
22 Larry Doud.

23 THE COURT: You are not saying that Larry Doud took  
24 his own personal money out of his pocket to pay for this.

25 MR. GOTTLIEB: No.

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1 THE COURT: Because you said RDC and Larry Doud, you  
2 know, went to the expense of paying for this.

3 MR. GOTTLIEB: No. I stand corrected. It is just  
4 that the invoice was directed, and you'll see Larry Doud. It's  
5 sent to Larry Doud and RDC.

6 THE COURT: What do you say that this demonstrates?

7 MR. GOTTLIEB: It is inconsistent with a person who is  
8 trying to cover up, is trying to hide the fact that there are  
9 problems, who doesn't care about compliance. There is no  
10 question, your Honor, the government opened in saying Larry  
11 Doud did not care about compliance. The fact of the matter is,  
12 this is just a piece of what the jury should consider, that it  
13 doesn't make sense and it is inconsistent with somebody who  
14 doesn't care at all about compliance, and is so greedy, doesn't  
15 want to spend any money in compliance, is nevertheless spending  
16 money for an internal objective investigation with  
17 recommendations, which were chock full, your Honor.

18 THE COURT: I'm not sure what were the chock full  
19 recommendations?

20 MR. GOTTLIEB: That would be Government Exhibit 33.

21 THE COURT: 33?

22 MR. GOTTLIEB: There is a September 12, this is a  
23 government exhibit.

24 THE COURT: Yes, I have it.

25 MR. GOTTLIEB: The September 12, 2014 memorandum,

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1 Government Exhibit 33.

2 THE COURT: Where are the recommendations?

3 MR. GOTTLIEB: In the subject, it reads Pro Compliance  
4 PVS Reporting and Compliance Department Recommendations.

5 THE COURT: I'm sorry. Okay. And what type of  
6 recommendations going to what? About --

7 MR. GOTTLIEB: To improvements that should be made in  
8 their compliance program.

9 THE COURT: Okay. But again, these are not  
10 recommendations with regard to how they're supposed to respond  
11 or comply with those compliance rules.

12 MR. GOTTLIEB: Again, the government exhibit really  
13 just, you can see even on page six, after going through what  
14 the law firm found deficiencies found in the compliance  
15 program, they talk about prompt adoption and implementation of  
16 the recommendations set forth will help RDC comply with DEA's  
17 suspicious order and other controlled substance requirements  
18 and establish a pattern of compliance.

19 THE COURT: Okay. So, again, I want to make sure I  
20 understand. You want to show that they spent \$35,000 on this  
21 engagement, and that what the law firm was hired to do was to  
22 evaluate their compliance rules?

23 MR. GOTTLIEB: Yes.

24 THE COURT: But it doesn't say anything one way or the  
25 other about evaluating whether or not they're complying with

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1 the rules, but it deals with an evaluation of whether or not  
2 the compliance rules were adequate and recommendations to  
3 strengthen those compliance rules.

4 MR. GOTTLIEB: Yes, your Honor.

5 THE COURT: We don't know from this, or I'm not sure  
6 if we know from any other testimony in this record so far, as  
7 to whether or not RDC made changes consistent with these  
8 recommendations.

9 MR. GOTTLIEB: That's correct, your Honor.

10 THE COURT: Okay. But you just want to demonstrate  
11 that -- okay. You want to demonstrate that they made the  
12 decision to ask this firm to evaluate their compliance rules  
13 and procedures and they paid this firm \$35,000 to do so.

14 MR. GOTTLIEB: Yes, your Honor.

15 THE COURT: And the government's position is what,  
16 with regard to whether or not they should be able to  
17 demonstrate that?

18 MR. ROOS: So, just that, what they paid the law  
19 firm -- the fact they have this law firm do this evaluation and  
20 make recommendations is in evidence. The costs of that is not  
21 particularly relevant. That's point one.

22 Point two, to the extent the Court disagrees, this  
23 Exhibit V1 is pages on pages of what seem to me cryptic,  
24 somewhat redacted of details of professional services. Why  
25 not -- again, I don't think any of this should come in. Why

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1 not just use the last page, which is this one, that just says  
2 the number of hours and what they paid.

3 MR. GOTTLIEB: Frankly, I'll agree to that. That is  
4 the only important aspect. The subpoena required them to send  
5 everything, which I wanted the government to see also. But I'm  
6 more than happy that the last page be the exhibit.

7 THE COURT: If the two of you are in agreement and you  
8 want to stipulate, then I'll go along with whatever the two of  
9 you can agree to. To the extent that you can't agree, then I  
10 will rule. So if you can agree that a particular document is  
11 going to come in, and then you both can argue what you will  
12 from what that document demonstrates, I'm willing to accept  
13 whatever stipulation you can agree to. But if you can't agree,  
14 then you should tell me and I will rule.

15 MR. ROOS: Okay.

16 THE COURT: Does it appear you'll be able to resolve  
17 this without my assistance?

18 MR. ROOS: Let's chat it over. But I think we may be  
19 able to. And if not, I think your Honor understands the issue  
20 and I'm sure we can deal with it at the next break.

21 THE COURT: So, all right. So, all of our jurors are  
22 here. So, again, my concern was that, and I may even change  
23 the rules for the day. Part of my concern yesterday about the  
24 lateness of this witness's testimony is that the procedures  
25 that we've been told to follow is that when we're not in the

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1 courtroom, the jury is supposed to stay in the jury room. And  
2 I'm a little concerned about bringing the jury out here for 30  
3 minutes' worth of testimony and then sending them back into the  
4 jury room at 11 o'clock and telling them they've got to sit  
5 there until 1:30 until the defense witness shows up. That's  
6 the choice that I have. And I'm hesitant to say on the record  
7 I'll break the rules and let them come out of the jury room.  
8 But, I am a little concerned that that's not the best way to  
9 keep their attention focused on this case.

10 But, again, you think there is any possibility that  
11 this witness is going to arrive before 1:30?

12 MR. GOTTLIEB: No, your Honor. We have dealt with it  
13 all evening, so 1:30 is the earliest. He should be here at  
14 1:30.

15 THE COURT: Okay. All right.

16 MR. ROOS: There is one issue related to that witness,  
17 your Honor, I can raise. Which is we reviewed his CV and some  
18 of the materials. He has a background of accounting, so to the  
19 extent he is applying accounting principles to Mr. Doud's bonus  
20 or the sales, that seems okay and we'll cross him on it.

21 One thing we are concerned about is, it's not clear to  
22 us he has any sort of background in economics or the health  
23 care industry, so we wanted to be sure his testimony is going  
24 to be limited to things which are within his competency which  
25 is accounting.



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1 THE COURT: What is the significant difference between  
2 his background and your expert witness's background?

3 MR. ROOS: I think the significant difference is our  
4 expert witness is a professor of economic, so he is able to  
5 talk about supply and demand, the economics of a business.

6 THE COURT: I thought you said that their witness has  
7 a background in economics.

8 MR. ROOS: No, just accounting. He has a B.A. in  
9 accounting.

10 THE COURT: I'm not sure I understand the difference.

11 MR. ROOS: The difference is Mr. Janey yesterday was  
12 asking questions about, you know, bundled products,  
13 distribution, CDC numbers about the increase or decrease in  
14 demand. Those are all things that make sense you'd ask an  
15 economist, and he asked him on cross yesterday, so it seems  
16 fine.

17 I just don't think an accountant has any sort of  
18 expertise in that sort of area.

19 THE COURT: What is it you anticipate he is going to  
20 testify about that you say that he shouldn't be able to  
21 testify?

22 MR. ROOS: It would be any of those sort of  
23 macroeconomic questions that came out yesterday like what was  
24 the --

25 THE COURT: I'm not that sophisticated. What is a

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1 macroeconomic question?

2 MR. ROOS: Basically, was the overall nationwide  
3 demand and supply of opioids increasing or decreasing. Another  
4 question would be does --

5 THE COURT: Wasn't that the subject of your expert's  
6 testimony?

7 MR. ROOS: He is an economist who studies those  
8 things. An accountant doesn't. A accountant does a  
9 calculator.

10 MR. GOTTLIEB: If I put on --

11 THE COURT: I think most accountants would be a little  
12 insulted by that statement. But I don't know what accountants  
13 do. They do numbers.

14 MR. GOTTLIEB: Your Honor, this witness is Mr. Janey's  
15 witness, he's not here right now. He will be here. We weren't  
16 aware there was going to be another objection raised.  
17 Mr. Janey I think is the person to respond if your Honor deems  
18 it necessary.

19 THE COURT: When Mr. Janey comes we can deal with  
20 this. But, can you just tell me how long do you anticipate  
21 this witness is going to testify on direct examination?

22 MR. GOTTLIEB: I think Mr. Janey yesterday said about  
23 45 minutes.

24 THE COURT: Okay.

25 MR. GOTTLIEB: I believe that's what he said.

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1 THE COURT: Do you have exhibits that go with this  
2 witness's testimony?

3 MR. GOTTLIEB: Yes.

4 THE COURT: Do I have a copy of those exhibits?

5 MR. ROOS: We got them last night around 9:30.

6 THE COURT: So I probably don't have a copy. Can I  
7 see those exhibits? That will put it in some context for me.

8 MR. GOTTLIEB: I am going to check.

9 THE COURT: Okay. And how many exhibits do you have?

10 MR. GOTTLIEB: You're really testing me this morning,  
11 your Honor.

12 MS. ROTHMAN: I can answer that. It is like an eight  
13 page PowerPoint.

14 MR. GOTTLIEB: Thank you.

15 THE COURT: So do you have any objections to this  
16 PowerPoint?

17 MR. ROOS: Potentially, but if Mr. Janey --

18 THE COURT: That can't be potentially. Now is the  
19 time. Tell me, if you have seen the exhibits, same question I  
20 asked them. Do you have an objection to the exhibits or do you  
21 have an objection to the testimony?

22 MR. ROOS: I think --

23 THE COURT: If there's something about the exhibits  
24 that you are going to fight about, you can raise now if you are  
25 going to say the exhibits are inadmissible.

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1 MR. ROOS: Yes. So, we do have some objections to the  
2 potential testimony. On the exhibits, I want to check with  
3 Mr. Burnett who is crossing the witness. I guess we have  
4 neither of the attorneys here.

5 THE COURT: That's not helpful to me. You don't need  
6 all lawyers here, but I need the lawyers with the relevant  
7 information so I can move forward. Let's get both the defense  
8 and the government's lawyers here so we can resolve these  
9 issues.

10 MR. ROOS: My understanding, though, is Mr. Burnett's  
11 cross is going to be shorter than what's projected for the  
12 direct. And Ms. Rothman will be able to speak to the rebuttal  
13 witness's length. 30 minutes or less.

14 THE COURT: Does somebody have those exhibits that I  
15 can review?

16 MS. ROTHMAN: The defense exhibits?

17 THE COURT: Yes.

18 MR. GOTTLIEB: The answer is yes and I think we are  
19 sending it and beaming it as we speak.

20 THE COURT: Let me look at the exhibits. And I'm not  
21 quite sure, again, let me take the time now.

22 What is it that you anticipate the witness is going to  
23 say that you think you are going to object to?

24 MR. ROOS: Okay. So two categories. So number one  
25 is, yesterday Mr. Janey asked some questions about the

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1 relationship between different types of products and what he  
2 called bundling. And I am not an economist either. But my  
3 understanding is that's sort of a theoretical economics concept  
4 of one price in one sort of product line affecting another.

5 And our position is, while an economist can testify  
6 about it, so it was permissible for Mr. Janey to have crossed  
7 our expert about it, it is not permissible for an accountant to  
8 testify about economic principles.

9 THE COURT: What is it on this issue that you believe  
10 that your witness testified to?

11 MR. ROOS: So, basically, it was just questions of  
12 whether --

13 THE COURT: Tell me the answer. What did he testify  
14 to?

15 MR. ROOS: What our witness testified to? That  
16 whether or not a pharmacy buys controlled substances can affect  
17 the overall sales. Because a pharmacy is not interested in  
18 buying a particular product line, it wants to buy all of the  
19 products available to it.

20 THE COURT: Why isn't that common sense, not  
21 expertise?

22 MR. ROOS: I think there is a common sense element to  
23 it.

24 THE COURT: I'm trying to understand in what way do  
25 you say your witness is uniquely situated to point that out,

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1 and that a layperson or their expert is unqualified to say the  
2 same thing?

3 MR. ROOS: He can say the same thing. What I'm  
4 concerned about is he is going to say, I am an expert  
5 accountant, and I'm telling you here, you, jury, that's not how  
6 the world works.

7 THE COURT: What do you think he is going to say about  
8 how the world works otherwise?

9 MR. ROOS: I'm concerned -- maybe this is totally off  
10 base, in which case we won't have an objection on this point.  
11 But I am concerned he is going to say something like, as an  
12 expert accountant, I can tell you that, actually, companies and  
13 the pharmaceutical industry, their customers don't care about  
14 whether or not they can buy all the products, contrary to what  
15 your common sense may be. Then the jury will be like, well, my  
16 common sense made me think that they would want to buy all the  
17 products from one place, like the grocery store example. But I  
18 am hearing from this expert this is something else. But  
19 actually, our position is the expert isn't qualified to talk  
20 about those types of things.

21 THE COURT: Do we need to wait for Mr. Janey on this  
22 issue? Because I'm not quite sure what the parameters of this  
23 witness's testimony is.

24 MR. GOTTLIEB: That would make sense. If I say  
25 anything, I'm not relevant on this issue.

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1 THE COURT: All right. So, are you prepared to go  
2 forward with your first witness?

3 MR. GOTTLIEB: We are, your Honor. But while we're  
4 talking, and I can appreciate that we can try to resolve all  
5 issues. On the issue of the rebuttal witness, we received word  
6 last night that they did intend to call a rebuttal witness on  
7 that exhibit that will be received in evidence.

8 THE COURT: Which exhibit?

9 MR. GOTTLIEB: Defense Exhibit A82.

10 THE COURT: Which is what?

11 MR. ROOS: The chart we were talking about yesterday.

12 MR. GOTTLIEB: The spreadsheet of the terminated and  
13 suspended pharmacies.

14 THE COURT: And?

15 MR. GOTTLIEB: Apparently, and they were good enough  
16 to share with us that this witness is being brought down as  
17 somebody who has just now looked at records and is going to say  
18 and inform the jury of something which the jury has already  
19 heard from numerous witnesses.

20 Specifically, in reviewing Defense Exhibit A82, this  
21 spreadsheet, some of the pharmacies that are listed as being  
22 either suspended or terminated, subsequently purchased  
23 pharmaceuticals from RDC. Now, there has already been quite a  
24 bit of testimony, a number of times, that even if a pharmacy  
25 was suspended or terminated, that did not preclude turning them

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1 back on.

2 THE COURT: That was not the subject of the testimony  
3 with regard to the exhibit that you want to offer.

4 MR. GOTTLIEB: That's correct.

5 THE COURT: My recollection is, after we spoke I went  
6 back to the transcript. It appears to me this issue arose on  
7 Friday, Whitmore. Which one is Whitmore?

8 MR. GOTTLIEB: The DEA agent.

9 THE COURT: All right. So this arose during that  
10 witness's testimony. And you said: "If we can put on the  
11 board Government Exhibit 268 -- I'm absolutely wrong. It was  
12 278. Thank you.

13 "Mr. Roos: Objection, your Honor. This is not the  
14 version that's in evidence. This is not 278 that's in  
15 evidence.

16 "Mr. Gottlieb: I just asked for Government Exhibit  
17 278.

18 "Mr. Roos: It might be a prior version. It looks  
19 like this is being shown to the jury, and this is not the  
20 proper version."

21 Now, that's where we had that conversation about two  
22 different exhibits.

23 MR. GOTTLIEB: And --

24 THE COURT: I'm not sure there is anything we already  
25 have in evidence that is determinative of who is going to



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1 testify to what and what's going to be rebutted.

2 MR. GOTTLIEB: Let me try to clarify. What I'm  
3 raising about the rebuttal witness has nothing do with what  
4 your Honor just read. Apparently, the rebuttal witness is  
5 simply going to testify, looking at that exhibit, Defense  
6 Exhibit 82, I have looked at the pharmacies that were either  
7 suspended or terminated before 2017, and determined that some  
8 of those pharmacies subsequently, apparently, were turned back  
9 on and made purchases.

10 THE COURT: So that accounts for the difference  
11 between their exhibit and your exhibit. Is that right?

12 MR. GOTTLIEB: I won't speak for them.

13 THE COURT: You are saying you are objecting to their  
14 rebuttal, so I assume you are speaking to it.

15 MR. GOTTLIEB: The reason I'm objecting to their  
16 rebuttal is that if all he's going to say is that some of those  
17 pharmacies subsequently purchased, there has already been  
18 testimony, it's repetitive, it's duplicative, because already  
19 there is testimony before the jury that any pharmacy that was  
20 terminated or suspended, at any time, could be turned back on.

21 THE COURT: I know, but that doesn't go to the issue  
22 you just raised. If you are going to put in a document and you  
23 say its relevance is that that may be the accurate information,  
24 and imply to the jury that the document that the government put  
25 in is inaccurate, or unreliable information, their rebuttal is

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1 once you put in that document, to explain the difference  
2 between those two exhibits, to argue that, well, it's not as  
3 nefarious as Mr. Gottlieb wants you to believe, and it's not,  
4 it doesn't go to the inaccuracy. This is why those two  
5 documents are different.

6 Isn't that the whole issue with regard to this  
7 document?

8 MR. GOTTLIEB: No.

9 THE COURT: Okay.

10 MR. GOTTLIEB: No.

11 THE COURT: For what purpose are you offering your  
12 exhibit?

13 MR. GOTTLIEB: Your Honor, I'm going to withdraw my  
14 questions about the rebuttal. I just thought it was repetitive  
15 of what had already come in. But we can go right to it.

16 THE COURT: Again, I need to concentrate on what you  
17 intend to do with your exhibit and the purpose that you're  
18 offering it. And what I understand is the purpose that you're  
19 offering it is to show that the 278 cannot be relied upon as  
20 accurate information because there is another document that  
21 says something different. If that's not the relevance, tell me  
22 what the relevance is.

23 MR. GOTTLIEB: No, it's not.

24 THE COURT: What is the relevance?

25 MR. GOTTLIEB: I have no intention of arguing that.

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1 The relevance is during the time of the indictment, 2012,  
2 during that period of time, there has already been testimony on  
3 both direct and cross from witnesses that in 2012, 2013, at  
4 various times, pharmacies were either suspended for a time  
5 period, or terminated. But then they went on to say, and in  
6 some cases they were then reinstated.

7 I just want to get in front of the jury the business  
8 record to show that during that period of time relevant to this  
9 indictment, in fact there were some that were suspended and  
10 some that were terminated.

11 THE COURT: But your argument against their stuff is  
12 the exact thing that you want to do. The argument is that we  
13 shouldn't be dealing with this at all, because it is already in  
14 evidence. That's your argument against their argument. Then  
15 you are the ones that want to raise it again. I don't  
16 understand, okay.

17 That's fine. If you're withdrawing that objection at  
18 this point in time. But, look, I'm giving you full opportunity  
19 to put in this document. If the government believes that your  
20 putting in this document at this point in time is misleading  
21 with regard to what the testimony is, then they have the right  
22 to have somebody come back and explain that. And otherwise,  
23 I'm not even sure why you're just not putting in evidence  
24 that's already in the case, because I don't hear what this  
25 document is.

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1 I always ask this question: How is your evidence of  
2 this document going to make the jury smarter? Okay? That's  
3 the basic rule I use. What information are you giving them  
4 that they don't already have? You argued that the government  
5 is trying to give them the same information they have. And I  
6 don't understand how in applying that rule, somehow your  
7 putting in this document is giving them more information than  
8 they already have.

9 MR. GOTTLIEB: Your Honor, I hear you. This has been  
10 something that we've argued so much. But I'm withdrawing any  
11 concern. Thank you.

12 THE COURT: But the reason I take time with it is  
13 because I don't want to, in the middle of your examination,  
14 have to keep taking sidebars and keep going over this issue.  
15 Because both of you are objecting back and forth, then I am  
16 sitting here saying why didn't we resolve all of this when you  
17 knew you were going to raise this before we started and use the  
18 jury's time.

19 MR. GOTTLIEB: I understand and appreciate that.  
20 There is not going to be any examination. So we are going to  
21 be able to go right through it, your Honor.

22 THE COURT: So you're not going to have any testimony  
23 with regard to this document?

24 MR. GOTTLIEB: That's correct.

25 THE COURT: And if I can ask you this, and I hope it's

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1 in fairness, but what do you intend to argue from that  
2 document? What is the relevance? If you are not going to have  
3 any testimony relevant testimony that goes along with it, what  
4 is the conclusion that you are going to tell the jury that they  
5 should reach based on having received this document?

6 MR. GOTTLIEB: During time period of the indictment,  
7 2012 to 2017, certain decisions were made by RDC, either  
8 suspending or terminating the following pharmacies and using  
9 that document. Their rebuttal will say some of them at some  
10 point afterward were obviously reinstated and purchased. But I  
11 believe we are entitled to at least get in front of the jury  
12 that during the time period RDC made certain decisions, there  
13 were certain actions taken.

14 THE COURT: And only because of my ignorance, not your  
15 inadequacy. What you say is the issue is that your document  
16 shows that people were suspended or terminated because they're  
17 not on that list.

18 MR. GOTTLIEB: No. They are on the list, but it's  
19 checked off that they were either suspended or terminated.

20 THE COURT: But their argument is that doesn't make  
21 our exhibit inaccurate, because our exhibit includes those  
22 companies that were reinstated.

23 MR. GOTTLIEB: Your Honor --

24 THE COURT: No?

25 MR. GOTTLIEB: Listen, I can't make it any more clear.

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1 I have what you --

2 THE COURT: Just answer that question. Is that right?

3 MR. GOTTLIEB: The answer is no. I have no intention  
4 of saying their exhibit is inaccurate.

5 THE COURT: I understand that, but I'm saying the  
6 difference between those two exhibits, the two of you are not,  
7 neither one of you is arguing that one is the truth and the  
8 other is the untruth. Okay. You're just saying that their  
9 document reflects people that came, were suspended and then  
10 came back and came back later. And your document shows those  
11 people who were suspended. Period.

12 MR. GOTTLIEB: No. But the relevant part is their  
13 document only begins in 2017, and after the time of the  
14 indictment. The one we are seeking to introduce just gives a  
15 more complete and completes the record that in 2012 to 2017,  
16 this is the list. It just is really more completeness. It  
17 covers an additional time period.

18 THE COURT: Don't they have the right in rebuttal to  
19 bring in a witness to explain why that is a legitimate  
20 difference between these two documents?

21 MR. GOTTLIEB: Yes, they do, your Honor.

22 THE COURT: All right.

23 MR. ROOS: On a totally different subject. I think  
24 Mr. Burnett informs me we don't have any objections to the  
25 exhibits.

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1 MR. BURNETT: As long as it is just the PowerPoint  
2 presentation, then there is no objection.

3 THE COURT: Okay. Do you know right now a subject  
4 area that you anticipate that this witness is going to testify  
5 to, either related to these charts or otherwise, that you  
6 specifically have an objection to?

7 MR. BURNETT: Just one thing, your Honor. I'm not  
8 100 percent sure he is going to go here. So the charts are  
9 basically financial analyses of RDC's sales and bonuses  
10 attributable to different types of sales. No objection to what  
11 I expect will be testimony related to that.

12 Based on some handwritten notes I've seen, it seems  
13 like the expert has gathered some other information about RDC's  
14 businesses, either from conversations with the lawyers,  
15 conversations with Mr. Doud, or I don't know, potentially from  
16 other sources. I don't think he's a financial expert. He is a  
17 CPA. He didn't work at RDC.

18 To the extent he is going to comment on how RDC viewed  
19 different parts of its business, I think that would be outside  
20 the scope of his -- for instance, there is nothing in his  
21 expertise or his background that would let him comment that RDC  
22 thought one type of drug was more important than another type  
23 of drug, that sort of thing.

24 THE COURT: Unfortunately for me, I have no idea what  
25 you're talking about because I don't know what this witness is

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1 going to say. I am not sure you know what this witness will  
2 say or whether that will be an issue. I'm surprised you two,  
3 you didn't have, you don't have an expert report? You guys  
4 never exchanged expert reports?

5 MR. ROOS: They sent it in on Tuesday.

6 THE COURT: Say it again?

7 MR. ROOS: I thought they said they were going to file  
8 one on Tuesday.

9 THE COURT: You never requested or received an expert  
10 report and they never requested or received an expert report  
11 from your expert?

12 MR. BURNETT: There was an expert disclosure a month  
13 before trial that went out with respect to this witness, had a  
14 paragraph that said he was going to be testifying about the  
15 financial information about RDC's sales and Mr. Doud's bonus.

16 THE COURT: But it was no more specific than that?

17 MR. BURNETT: It was no more specific than that.  
18 That's why I'm kind of stabbing in the dark.

19 MR. GOTTLIEB: Can I just ask, because, listen, I have  
20 no reason to question anything that's being said. However,  
21 Mr. Janey is the person best to not only respond, but to hear  
22 what's being said and to be able to respond.

23 THE COURT: I agree. I agree. At this point, quite  
24 frankly, at this point I have no basis on which to limit this  
25 witness's testimony, because I have no idea what it is that it



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1 is anticipated he is going to say that's going to be outside  
2 the realm of his expertise. We're all guessing at this point.

3 MR. BURNETT: I am just guessing too. Just putting a  
4 flag out that this might be something we object to, if it comes  
5 up. If it doesn't, there won't be an objection.

6 THE COURT: So, I'm going to bring in the jury. We'll  
7 call the witness. I assume we are going to be done within the  
8 next half hour, 45 minutes, then we'll take the break. And  
9 I'll tell the jury that we probably will have the next witness  
10 at 1:30.

11 Did you want this rebuttal witness, did you want to do  
12 that witness after your expert or did you want to do that  
13 witness before your expert?

14 MS. ROTHMAN: Your Honor, it is the government's  
15 preference to do the rebuttal witness after the expert. In a  
16 typical rebuttal case.

17 THE COURT: Before you were here, we had a discussion  
18 that made me think you might want to do it otherwise.

19 MR. GOTTLIEB: After the character witness, would you  
20 like me, I am prepared to introduce and to request that both  
21 exhibits, Defense V3 and Defense A82, and just to indicate on  
22 the record for the jury the business record certification so  
23 they understand what those documents are.

24 THE COURT: Yes. I'd like to put in all evidence that  
25 the parties have, other than the rebuttal testimony, and all

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1 evidence that will be placed before this jury, other than the  
2 expert's testimony so we don't have to waste any time.

3 I'm going to ask the government do they rest their  
4 case in chief and they'll say yes. I'll turn to defense and  
5 ask you if you want to call any witnesses and you will call  
6 your first witness. I will instruct the jury that the next  
7 witness is not available until 1:30, but I still anticipate we  
8 can finish the witnesses today. And then I will give them the  
9 break. And tell them I will bring them out here hopefully  
10 promptly at 1:30. As a matter of fact, let's anticipate  
11 reconvening at 1:15. If the witness is here by then, then I'm  
12 going to bring the jury out and we'll start. If the witness is  
13 not here by then, I'll expect the witness within 15 minutes of  
14 that so we can start. And then if the defense rests, the  
15 government can call their rebuttal witness and hopefully we'll  
16 be done for the day.

17 MR. ROOS: Your Honor, this is the signed 1006  
18 stipulation. We previously read it and so my proposal would  
19 just to be to reoffer it, not even read it. And then say the  
20 government rests its case.

21 THE COURT: Which exhibit?

22 MR. ROOS: 1006. It is the one about -- do you  
23 remember there was the dispute about the ARCOS consent decree,  
24 on the fly the parties wrote a stipulation, the version we  
25 offered at the time wasn't signed. So just in an abundance of

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1 caution, I'm going to reoffer it with the signature. Then  
2 we'll say we rest.

3 I think it would just be appropriate, if it is your  
4 Honor's practice, to allocute the defendant on not testifying.  
5 I don't know if you want to do that.

6 THE COURT: Do you want to do that now?

7 MR. GOTTLIEB: Your Honor, I'm sorry. I was actually  
8 reading something. My apologies.

9 THE COURT: I anticipated and they were suggesting  
10 that I inquire as to whether or not you discussed with your  
11 client his right to testify, and it is his decision at this  
12 point that he does not anticipate testifying.

13 MR. GOTTLIEB: Your Honor, can I have one moment,  
14 please?

15 THE COURT: Sure. You can have more than that.

16 (Conferring)

17 MR. GOTTLIEB: Thank you very much. We can proceed  
18 with that inquiry if your Honor wants to do it at this time.

19 THE COURT: Yes. What's your position at this point  
20 in time?

21 MR. GOTTLIEB: Mr. Doud is not going to testify, your  
22 Honor.

23 THE COURT: Okay. And Mr. Doud, do you understand you  
24 have the right to testify, you're not required to testify.

25 Is it your decision, after consulting with your

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1 attorney, that you do not intend to testify?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: All right. Thank you. So, let's do this  
4 one witness, and then we'll reconvene at 1:15.

5 MR. GOTTLIEB: Your Honor, when the government does  
6 rest, we've already discussed it, our Rule 29 motion will be  
7 deemed to have been made?

8 THE COURT: Yes.

9 MR. GOTTLIEB: We will submit our written submission  
10 to the Court some time tomorrow.

11 THE COURT: Okay. And I'll consider it renewed at the  
12 close of your case, but if you remember, you can put on the  
13 record that you are renewing that motion.

14 MR. GOTTLIEB: Thank you.

15 THE COURT: And I'll await the submissions. So the  
16 jury is on their way up.

17 (Pause)

18 THE COURT: Let's bring in the jury.

19 (Jury present)

20 THE COURT: Good morning. We obviously kept you  
21 waiting a little bit. It's been very helpful, because I  
22 believe now that we have approximately three more witnesses to  
23 hear. I'm hopeful we can hear all of those witnesses today.  
24 The only issue is that we have a witness that's ready now, the  
25 scheduling has been a little awkward. We have a witness that's

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1 ready now. We have another witness who may not be ready until  
2 about 1:30. So, when we finish this witness, we're probably  
3 going to take a longer break until 1:30, maybe 1:15,  
4 particularly if the witness arrives a little early, we can do  
5 that witness, and then there is one other witness after that.  
6 I anticipate that witness would be short and we can do that  
7 witness after as the third witness. And I believe I'll ask the  
8 parties, but I believe that at that point we might have all of  
9 the evidence before you. If that's the case, we're going to  
10 adjourn for the day after that.

11 We will not sit tomorrow. So, tomorrow we'll take  
12 off. I know the weather is not predicted to be very good,  
13 particularly late tomorrow. So we are going to take tomorrow  
14 off.

15 And if we finish the witnesses today, as I plan, on  
16 Monday morning we will have the summations, closing arguments  
17 of the lawyers, and then after we finish the closing arguments,  
18 depending on how much time we have left in the day, I may give  
19 you the jury instructions, and send you in to begin your  
20 deliberations, but there is a possibility if we don't have  
21 enough time for that, we'll do that Tuesday morning. I'll give  
22 you instructions on the law and send you in to begin your  
23 deliberations at that time.

24 So that's pretty much the schedule as I anticipate it.  
25 I think I'm fairly confident we can meet that schedule. So we

1 do have a witness who is here now available to testify. And  
2 we'll proceed with that witness at this point in time.

3 Let me first turn to the government. Anything further  
4 by the government at this point?

5 MR. ROOS: Yes. The government offers Exhibit 1006,  
6 which is a stipulation between the parties. It was previously  
7 offered. But the version we're now offering, which is dated  
8 January 14 is, 2022, has the signatures of all the parties.

9 THE COURT: That stipulation will be admitted in  
10 evidence.

11 (Government's Exhibit 1006 received in evidence)

12 MR. ROOS: With that, your Honor, the government rests  
13 its case in chief.

14 THE COURT: Mr. Gottlieb, do you wish to call any  
15 witnesses on behalf of the defense?

16 MR. GOTTLIEB: Yes, we do, your Honor.

17 THE COURT: Would you call your first witness.

18 MR. TOWNSEND: The defense calls Donna Blythe.

19 THE COURT: She is where?

20 MR. TOWNSEND: She's out in the hallway, your Honor.

21 THE COURT: Bring her in. Would you step up, please,  
22 ma'am.

23 Mr. Townsend, you can inquire.

24 (Continued on next page)

M1RBDOU2

Blythe- Direct

1 DONNA BLYTHE,

2 called as a witness by the Defendant,

3 having been duly sworn, testified as follows:

4 THE COURT: Mr. Townsend, you can inquire.

5 MR. TOWNSEND: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. TOWNSEND:

8 Q. Good morning. Are you employed?

9 A. Yes.

10 Q. What do you do for a living?

11 A. I'm an ordained elder in the United Methodist church  
12 currently serving Edgewater United Methodist church in  
13 Edgewater, Florida.

14 Q. What's your specific role at Edgewater church in Florida?

15 A. I am the lead pastor and oversee all activities of the  
16 church, preach, teach, administer the sacraments, visit those  
17 who are sick, do all administrative duties, oversee christian  
18 education, community programs for those in need.

19 Q. How long have you been doing that?

20 A. I have been at Edgewater for two and a half years, but I've  
21 been in ministry for twenty-six.

22 Q. Thank you. Do you know an individual by the name of Larry  
23 Doud?

24 A. Yes.

25 Q. How you do know him?

M1RBDOU2

Blythe- Direct

1 A. He is a parishioner and a church member.

2 Q. Do you see him in the courtroom today?

3 A. Yes, I do.

4 Q. How long have you known Larry Doud?

5 A. Since I started at Edgewater in July of 2019.

6 Q. Would you describe your relationship with Mr. Doud?

7 A. I am his pastor and have seen him in worship and in many  
8 activities of the church and have provided pastoral care with  
9 Mr. Doud.

10 Q. Would it be fair to say that you know him in the context of  
11 the church community?

12 A. Yes.

13 Q. Would you describe his relationship with the church  
14 generally?

15 A. He is very active in the church. Did you have something  
16 more specific?

17 Q. Does Larry Doud have any leadership positions in the  
18 church?

19 A. He has agreed to be in leadership. His name always comes  
20 up as somebody that we should ask to be in leadership. Because  
21 of this situation, he has sometimes been reluctant because he  
22 doesn't want ever anything negative to reflect on the church,  
23 but he is this year serving as our staff parish relations  
24 community chair person. He's a member of the board of trustees.  
25 Those are leadership roles that he has now.



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Blythe- Direct

1 Q. Is he active in those roles?

2 A. He's very active in those roles. He doesn't just go to  
3 meetings. He participates in the living out of those roles and  
4 goes above and beyond.

5 Q. Can you just explain what that means, the living out of  
6 those roles?

7 A. In terms of trustees, he's a part of decisions that we've  
8 made with major renovation in the last two years. He takes an  
9 active role -- not just in decision making, but he's there  
10 serving. If I need something, he's someone I can call on and  
11 Larry will show up and do what's needed, including mowing the  
12 grass weekly on a regular basis.

13 Q. In addition to mowing the grass, just generally speaking  
14 what other service related things does Larry Doud do for the  
15 church?

16 MS. ROTHMAN: Objection.

17 A. He's active --

18 THE COURT: Overruled. She can answer.

19 A. He's active in the food pantry ministry and goes and picks  
20 up food from Second Harvest which is where we get a lot of our  
21 food from. He serves those who are in need and come to the  
22 food pantry on Saturdays. He has served as an usher, a  
23 liturgist. He has narrated cantatas. Larry is just somebody  
24 who we can call on. He has many gifts and graces and is  
25 generous with his time and his service.

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Blythe- Direct

1 Q. How would you describe his dedication to the various things  
2 you've described?

3 A. He is very committed and has a very deep faith that's life  
4 long. He's one of the persons that when I recently had a  
5 service where men gave their testimony or their faith of  
6 journey, their story, Larry did that during the Sunday morning  
7 worship service.

8 Q. And with regard to all of the things you've testified to,  
9 you've personally observed Larry do them?

10 A. Yes.

11 Q. As a result of the various roles that Mr. Doud has in the  
12 church, is he well-known in the church community?

13 A. He is well-known, well-respected, well thought of and has  
14 many people that I've seen him help, and he has a church family  
15 that is very concerned and in prayer for him.

16 Q. Is Larry Doud trusted by members of the church?

17 A. I would completely trust him, and I believe members of the  
18 congregation do and they are aware of this current situation.

19 Q. What makes you say that members of the church would trust  
20 him?

21 A. I have observed it and I believe with 46 years of  
22 professional experience in helping ministries, I have the  
23 ability to discern when people trust one another. He is  
24 listened to. His opinion is sought out, and he is a person of  
25 integrity and good character. I don't know anybody that does

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Blythe- Direct

1 not trust him in our faith community.

2 Q. Have you spoken generally to members of the church  
3 community?

4 MS. ROTHMAN: Objection.

5 A. Yes.

6 MS. ROTHMAN: Calls for hearsay.

7 THE COURT: Well, I'm going to sustain the objection.  
8 I ask you to rephrase the question. What specifically are you  
9 asking?

10 MR. TOWNSEND: Yes, your Honor.

11 Q. Are you familiar with generally with the sentiments of the  
12 church community towards Larry Doud?

13 A. Yes.

14 Q. What are those sentiments generally regarding Larry Doud's  
15 view of material goods, whether he's greedy?

16 MS. ROTHMAN: Objection.

17 THE COURT: Sustained, unless you can establish some  
18 foundation in regard to those kinds of conversations.

19 Q. How would you describe Larry Doud's representation for  
20 honesty?

21 A. He has an excellent reputation for honesty, for being a  
22 caring person of good character. I cannot think of any  
23 adjective about Larry that's negative.

24 Q. What leads you to the conclusion that he has a  
25 representation for honesty?

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Blythe- Direct

1 A. Conversation with other parishioners that are known to him  
2 through service.

3 MS. ROTHMAN: Mindful of the hearsay, your Honor.

4 THE COURT: You have something to say, say it.  
5 Otherwise, let's move forward.

6 Q. Is Larry Doud's representation one for being flashy?

7 MS. ROTHMAN: Objection, leading.

8 THE COURT: Yes, I'll sustain that objection.

9 Q. Generally speaking, how would the church community describe  
10 him?

11 MS. ROTHMAN: Objection, calls for hearsay.

12 THE COURT: I'm not going to sustain on hearsay  
13 grounds. You have to be more specific as to what qualities  
14 you're talking about.

15 Q. How would they describe his reputation for integrity?

16 A. In conversations I have personally had with other members  
17 of the congregation, they describe him as a man of integrity,  
18 as somebody that they trust, as someone that they are -- most  
19 people who know him well have great difficulty believing he's  
20 in the situation.

21 MS. ROTHMAN: Objection, your Honor. Move to strike.

22 THE COURT: I'll strike that testimony.

23 MR. TOWNSEND: Thank you very much, your Honor.

24 No further questions.

25 THE COURT: Any further questions for this witness?

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Blythe - Cross

1 MS. ROTHMAN: Yes, your Honor. Very briefly.

2 CROSS-EXAMINATION

3 BY MS. ROTHMAN:

4 Q. Good morning.

5 A. Good morning.

6 Q. How would you prefer that I refer to you, as Ms. Blythe or  
7 Pastor Blythe, what's your preference?

8 A. Reverend.

9 Q. Reverend Blythe, thank you for being here.

10 Reverend Blythe, you first met Mr. Doud in 2019; is  
11 that right?

12 A. Yes.

13 Q. And that was after he had been charged in this case,  
14 correct?

15 A. Yes.

16 Q. And that was years after he had left RDC?

17 A. Yes, I guess.

18 Q. Well, you're aware that Mr. Doud left RDC in 2017, right?

19 A. I'm aware of that from what's out on the media, yeah.

20 Q. And Mr. Doud spent many years at RDC, right?

21 A. Yes.

22 Q. And RDC is a company with employees?

23 A. I'm assuming so, yes, from what I've read.

24 Q. Senior executives like Mr. Doud?

25 A. Yes.

M1RBD0U2

Blythe - Cross

1 Q. A board of directors?

2 A. Yes.

3 Q. Shareholders?

4 A. I have not really researched the whole history of that  
5 company.

6 Q. You would agree with me, Reverend Blythe, that the  
7 employees of RDC worked at the company with Mr. Doud, right?

8 A. I would assume so.

9 Q. And they interacted with Mr. Doud when he was CEO of the  
10 company, right?

11 A. I would assume so.

12 Q. You didn't work at RDC, right?

13 A. No, ma'am.

14 Q. You didn't know Mr. Doud in 2012?

15 A. No.

16 Q. 2013?

17 A. No.

18 Q. 2014?

19 A. No.

20 Q. 2015?

21 A. I met him in 2019 as I've stated.

22 Q. So you don't know what it was like to work for Mr. Doud, do  
23 you?

24 A. No.

25 Q. You don't know what it was like to report to Mr. Doud, do

M1RBDOU2

Blythe - Cross

1     you?

2     A.   No.

3                 MS. ROTHMAN:  No further questions.

4                 THE COURT:  Any further questions of this witness?

5                 MR. TOWNSEND:  No, your Honor.

6                 THE COURT:  Thank you, ma'am.  You can step down.

7                 (Witness excused)

8                 (Continued on next page)

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1 THE COURT: Is there anything further we can do at  
2 this point? Do you have anything else you want to offer?

3 MR. GOTTLIEB: Your Honor, at this time if I can read  
4 one of the business record certification.

5 THE COURT: Yes, sir.

6 MR. GOTTLIEB: Your Honor, at this time we move for  
7 the receipt in evidence of what has been marked Defense Exhibit  
8 V3.

9 THE COURT: Any objection?

10 MS. ROTHMAN: No objection.

11 MR. GOTTLIEB: If we can just put it up on the screen,  
12 I will then read the business record certification.

13 THE COURT: Yes, sir.

14 MR. GOTTLIEB: I, Larry K. Houck, a director of Hyman,  
15 Phelps & McNamara, P.C., do hereby certify the following: One,  
16 I am duly authorized custodian of the subpoenaed business  
17 records and have the authority to make this certification.

18 Two, the invoices or documented payments in connection  
19 With legal services supplied to Rochester drug Co-Operative,  
20 Inc, regarding the evaluation of its compliance program and  
21 recommendations made thereto between July 1, 2014 and September  
22 12, 2014, provided in response to the order for the issuance of  
23 subpoena issued on January 26, 2022, in the above referenced  
24 case, the subpoena, are in Hyman, Phelps & McNamara, P.C.'s  
25 possession, custody or control.



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1           Three, the invoices prepared in connection with legal  
2 services supplied to Rochester Drug Co-Operative, Inc.,  
3 regarding the evaluation of its compliance program and  
4 recommendations made thereto between July 1, 2014 and September  
5 12, 2014, provided in response to the subpoena are true and  
6 correct copies, maintained in the course of regularly conducted  
7 activity of Hyman, Phelps & McNamara, P.C., and made in regular  
8 practice of Hyman, Phelps & McNamara, P.C., except that I have  
9 caused to be redacted portions of the narratives related to  
10 work performed by Hyman, Phelps & McNamara, P.C., that is not  
11 in response to the subpoena.

12           Four, the invoices provided responsive to the subpoena  
13 were created by persons of knowledge or created from  
14 information transmitted by persons with knowledge of the  
15 information shown and were created at or near the time the  
16 information became available.

17           Five, the Rochester Drug Co-Operative, Inc., paid the  
18 fees billed in the invoices in full.

19           Six, using the invoices and my recollection of the  
20 work performed, I created a chart estimating how much work was  
21 expended on legal work within the scope of the subpoena,  
22 excluding portions of billing entries that were based on legal  
23 work performed and bills on the invoices but outside the scope  
24 of the subpoena.

25           This record replicates the type of record that Hyman,

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1 Phelps & McNamara, P.C., regularly create for clients who  
2 request a division of fees when billing narratives cover  
3 multiple matters.

4 Seven, I declare under penalty of perjury that the  
5 foregoing is true and accurate.

6 Signed Larry K. Houck, Director.

7 If we could put on the screen that one page chart that  
8 is referenced in paragraph six, and this is marked V1A001, and  
9 it's entitled estimated fees for RDC's controlled substance  
10 compliance, July 17, 2014 to September 12, 2014. Without going  
11 through all the numbers, the cost estimate is \$34,135, and the  
12 business record indicates that all fees had been paid in full.

13 Your Honor, thank you very much.

14 THE COURT: It will be admitted into evidence.

15 (Defendant's Exhibit V3 received in evidence)

16 MR. GOTTLIEB: Your Honor, we actually have a  
17 stipulation. And if we if I can read that and show the  
18 exhibit. The parties stipulate and agree that, one, defense  
19 Exhibit A82 is a spreadsheet created and maintained by RDC in  
20 the regular course of business. Defense A82 is admissible in  
21 evidence, and if we could put on the screen, and your Honor I  
22 ask that that be received in evidence, specifically Defense  
23 Exhibit A82.

24 MR. ROOS: No objection to the stipulation or the  
25 exhibit.

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1 THE COURT: It will be admitted into evidence.

2 (Defendant's Exhibit A82 received in evidence)

3 MR. GOTTLIEB: Your Honor, without going through the  
4 entire document beginning at the top if we can scroll down  
5 slowly, if we could stop right there.

6 Your Honor, I just stopped at account number 4178  
7 Lake Carmel pharmacy where the action that's in the records is  
8 red flag suspension.

9 The date of that is May 26, 2016.

10 The next one is Allerton Park, termination of RDC's  
11 CS ordering privileges. That's dated August 11, 2016. Now if  
12 we can continue down to the bottom covering 2017, '18 and '19,  
13 '20.

14 The last entry, your Honor, is Newton pharmacy with a  
15 red flag suspension, dated February 10, 2020.

16 Your Honor, thank you very much.

17 THE COURT: Is there anything that we should do or you  
18 want to do before we do the next witness at 1:30?

19 MR. GOTTLIEB: The next matter would be the testimony  
20 of that next witness, your Honor.

21 THE COURT: Ladies and gentlemen, we're going to  
22 adjourn until 1:15. I'm going to see, obviously, if the  
23 witness shows up a little early, I want to go ahead and start.  
24 The witness is anticipated to be here by 1:30, so hopefully  
25 that's the latest. We'll proceed with that witness. We're on

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1 schedule to finish the witnesses and the testimony sometime mid  
2 or toward late afternoon, so don't discuss the case. Keep an  
3 open mind. I'll see you at 1:15 p.m.

4 (In open court; jury not present)

5 THE COURT: Let's adjourn to 1:15. See if the witness  
6 shows up early, otherwise I anticipate the witness to be here  
7 at 1:30 and we can start no later than that time.

8 MR. GOTTLIEB: Thank you very much.

9 THE COURT: Thank you.

10 (Recess)

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AFTERNOON SESSION

1:15 p.m.

(In open court; jury not present)

THE COURT: We ready to proceed with the next witness?

MR. JANEY: Yes, your Honor. And just for the Court's information, I'm embarrassed to say that I broke the home test that I was supposed to use this morning. So, when I entered the courthouse building today, I went to the appropriate place to -- oh, I may have the result here.

THE COURT: You're waiting for results?

MR. JANEY: I didn't know how to put together the machine myself, your Honor.

THE COURT: Did you get the notice?

MR. JANEY: Not yet. So, unfortunately, I may have to -- if I understand the rule, I may have to examine with the mask on.

THE COURT: Why don't you, hopefully you'll get it in the next few minutes. As a matter of fact, I'll have my secretary call.

MR. JANEY: I took the witness there, also.

THE COURT: Give me the name of the witness also.

MR. JANEY: Martinovic. Martin Martinovic.

MR. GOTTLIEB: Your Honor, we informed the government that we have a certified copy of Michael Paulsen's indictment, and under 803(6) as a certified copy of the public record, we

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1 are going to ask that be received in evidence for the following  
2 reason.

3 Yesterday, he was simply asked did you plead guilty,  
4 I'm sure you recall that, and, yes, I pled guilty to conspiracy  
5 to illegally distribute narcotics. The impression that the  
6 government, by not going into it further, left the jury, is  
7 that that conviction, that conspiracy, was this alleged  
8 conspiracy in this case.

9 So all we want to do, your Honor, is to make sure that  
10 the jury knows, and has access therefore to his indictment, to  
11 see it's not this case, it is not this indictment. Otherwise,  
12 they could say, okay, not only did Mr. Pietruszewski plead  
13 guilty, but Michael Paulsen as a co-conspirator pled guilty.  
14 So we simply want to put in this public record and  
15 specifically, under 803(6), it is permitted, your Honor.

16 MS. ROTHMAN: A couple of responses. We are not going  
17 to argue that Mr. Paulsen is a co-conspirator of Mr. Doud.  
18 We've been clear on who the co-conspirators are. So if that's  
19 Mr. Gottlieb's concern, that's not going to happen.

20 My concern is this is hearsay. It is an out-of-court  
21 statement, allegations in the indictment being offered for the  
22 truth. If the defense thought --

23 THE COURT: That's your favorite objection.

24 MS. ROTHMAN: It is your least favorite, but I think  
25 I'm right on this one. That's because there are assertions in

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1 the past in this indictment that are being offered for the  
2 truth.

3 If the defense wanted to clarify the scope of the  
4 conspiracy, they could have asked Mr. Paulsen questions. We  
5 don't think there is an admissible basis for this coming in. I  
6 also don't think there is confusion. His Rule 35 agreement is  
7 in evidence. It makes it clear it is a different case.

8 MR. GOTTLIEB: It's not hearsay. That's what 806 --  
9 exceptions to hearsay make clear. It's this clearly is in  
10 subdivision (6) cuts it out of hearsay. And while I appreciate  
11 that the government's not going to argue, I'm not worried about  
12 the government, I'm worried about any of the jurors having a  
13 misimpression, based on the questioning and the answers  
14 yesterday. We want to avoid the possibility.

15 THE COURT: Of what?

16 MR. GOTTLIEB: That they understand that the  
17 conspiracy to which he pled guilty is not this conspiracy that  
18 they are considering.

19 THE COURT: When you say is not this conspiracy. I'm  
20 not sure exactly what you are splicing here in terms of the  
21 argument. He pled guilty to selling, independently selling  
22 drugs illegally out of his pharmacy. He never said that  
23 Mr. Doud had anything to do with that, never said that Mr. Doud  
24 was a co-conspirator.

25 I don't know what it is that you think that the jury

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1 is going to assume if they don't see his entire indictment.

2 MR. GOTTLIEB: Your Honor, this is the concern, your  
3 Honor. If a juror heard this guy get up, called by the  
4 government, and with the leading questions he says that I pled  
5 guilty to conspiracy to distribute, and then was asked  
6 questions about where did you get the drugs, I got them from  
7 RDC, I think a reasonable juror might say, ah-ha, he must be  
8 involved in the conspiracy charge that we are going to be  
9 deliberating about.

10 THE COURT: Well, the problem is, is that it depends  
11 on what you mean by involved. He obviously said he got drugs  
12 from RDC, and he illegally sold them.

13 MR. GOTTLIEB: But he didn't --

14 THE COURT: RDC is involved. He never said that  
15 Mr. Doud was a co-conspirator in his crime. And he never said  
16 anything about it. And he was the most specific of all the  
17 witnesses to indicate that the conspiracy he pled to was based  
18 on his own individual conduct and the decisions he made about  
19 what he was going to do with the drugs.

20 MR. GOTTLIEB: Your Honor, see, I don't disagree with  
21 anything you just said. I really don't. But, you are an  
22 astute jurist, and we have 12 jurors who are just listening to  
23 the testimony, and they don't have the necessary talents to be  
24 able to distinguish between that. All they heard is that he  
25 pled guilty to conspiracy. And under the rules of evidence --



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1 THE COURT: That's not all they heard. They heard  
2 that specifically what were the underlying facts that he said  
3 constituted his crime.

4 MR. GOTTLIEB: But under the rules of evidence, it was  
5 raised by the government, what did you plead guilty to. They  
6 then put in what your sentence is. And then what did you do in  
7 the facts. All we are doing on our case, pursuant to 803(6),  
8 is putting in the indictment to which he pled guilty. There is  
9 no basis, because it is not hearsay.

10 THE COURT: Explain to me how that indictment  
11 addresses the issue of whether or not the conspiracy that he  
12 pled guilty to involved Mr. Doud.

13 MR. GOTTLIEB: If you just read it, it's clear. It  
14 doesn't raise anything about Mr. Doud or RDC.

15 THE COURT: So did his testimony.

16 MR. GOTTLIEB: But then we have something I can hold  
17 up and the jury can have as -- no, your Honor. Then the jury's  
18 entitled then to see the actual evidence that establishes, when  
19 I argue --

20 THE COURT: That's the problem. The problem I have is  
21 exactly the way you appropriately phrased it. This jury can  
22 see the evidence.

23 The indictment is not evidence. I'm going to tell the  
24 jury an indictment is not evidence so they don't use the  
25 indictment against Mr. Doud as evidence. So if you're offering

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1 it for that purpose, that is not a proper purpose to show that  
2 that's the evidence of which he pled guilty to. Quite frankly,  
3 I have no idea whether that's what he pled guilty to.

4 MR. GOTTLIEB: But the indictment that we've marked as  
5 V5, your Honor, is United States of America v. Michael Paulsen.

6 THE COURT: I understand that.

7 MR. GOTTLIEB: And it lays out the allegations, it is  
8 the proof, it's no longer speculation or wondering. It is the  
9 proof --

10 THE COURT: The indictment is never the proof.

11 MR. GOTTLIEB: But, your Honor, he said he pled guilty  
12 to it and the jury then can see the indictment and see it is  
13 not involving Larry Doud.

14 THE COURT: Okay. I understand your position. Do you  
15 have anything further on this?

16 MS. ROTHMAN: I think your Honor, I think your Honor  
17 is inclined to keep this out so I'm not going to talk anymore.  
18 If your Honor is inclined to let it in, I'll talk more.

19 MR. GOTTLIEB: I'm sorry.

20 THE COURT: There's several reasons why I think it is  
21 inappropriate at this point to do that. One is that the  
22 indictment is not evidence of anything. He pled guilty to what  
23 his allocution made out the crime to which he pled guilty to.  
24 And the only evidence of the crime that he pled guilty to is  
25 what he said in his allocution.

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1           Second of all, if you wanted to do that, if you wanted  
2 to make that point, you should have made that point on  
3 cross-examination. You did not make that point on  
4 cross-examination.

5           And three, the indictment itself, the jury should not  
6 read this indictment to make any conclusions about whether or  
7 not anything in that indictment is truthful, accurate, or  
8 represents the complete or partial crime that he testified to.  
9 So, and I think the fact alone that no one raised this on  
10 cross-examination and make that clear, and to now say you want  
11 to offer his indictment, I think that alone should preclude  
12 this at this point.

13           But I think there are legitimate reasons otherwise  
14 that it is not appropriate for the jury to take Mr. Doud's  
15 indictment and say that that's proof of nothing, and then to  
16 take the witness's indictment and argue that that's proof of  
17 the crime he pled guilty to.

18           MR. GOTTLIEB: Your Honor, the truth of the matter is,  
19 hearing the government representing that they are unrelated,  
20 and so that it's not necessary to introduce the indictment  
21 itself, is fine with me. As long as it can be made clear that  
22 what he pled guilty to was not a conspiracy that was charged,  
23 it's not the same indictment as in this case.

24           THE COURT: Well, as long as --

25           MR. GOTTLIEB: If that's the case, then there is no

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1 problem.

2 THE COURT: The way you phrased it there may be a  
3 problem. The only way you can do that is point to the evidence  
4 in this case that's before this jury.

5 MR. GOTTLIEB: No, your Honor.

6 THE COURT: I am not sure that evidence in this case  
7 is before this jury. If the two of you want to stipulate that  
8 evidence in this case before this jury, but there is no  
9 evidence before this case about what conspiracy he pled guilty  
10 to, who was involved in that conspiracy, who was excluded from  
11 that conspiracy, how that conspiracy related to RDC or  
12 Mr. Doud. Except to the extent that he testified that the  
13 drugs he got, those were the drugs that he bought from RDC.  
14 And there is no basis for this jury to come to the conclusion,  
15 based on this evidence, that he is saying that he and Mr. Doud  
16 agreed as co-conspirators to do this.

17 MR. GOTTLIEB: We agree with that. We agree with  
18 that. I just do not want it to be a dangling issue when we  
19 have the ability under the rules of evidence to clarify it. If  
20 your Honor is not going to allow us to introduce this  
21 non-hearsay statement, then I simply want to be able to be --

22 THE COURT: But it is a hearsay statement.

23 MR. GOTTLIEB: That the jury is not going to be told,  
24 and in fact it will be clear that what he pled guilty to, the  
25 charge, the indictment that he pled guilty to, is not this

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1 case.

2 THE COURT: I don't know why that's a relevant issue  
3 for argument by either side.

4 MR. GOTTLIEB: Because it's a concern that I have.

5 THE COURT: Ms. Rothman on this issue, she's right.  
6 That is hearsay. That's not non-hearsay. If you want to offer  
7 the allegations in the indictment because they're simply  
8 allegations in the indictment as proof of the substance of  
9 those allegations, that's exactly what I am going to tell the  
10 jury they can't do with regard to Mr. Doud's indictment.

11 MR. GOTTLIEB: But, the only difference is, your  
12 Honor.

13 THE COURT: What's the difference?

14 MR. GOTTLIEB: When he testified, he said he pled  
15 guilty to the conspiracy.

16 THE COURT: Well --

17 MR. GOTTLIEB: Therefore, the government, by not  
18 saying your indictment, we are not talking about this  
19 indictment, the government has presented a question and answer  
20 that could very well mislead and confuse the jury.

21 THE COURT: I know, but the one thing I know you  
22 understand and agree with, is that if you thought that was a  
23 relevant issue to deal with, you should have done that on  
24 cross-examination. If you thought that that's what was  
25 important to do. You didn't do that.

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1 MR. GOTTLIEB: But we're --

2 THE COURT: Now you want to do it through the  
3 indictment. If there was another legitimate way to do it, I  
4 would say so. But I am not going to tell the jury that they  
5 can conclude that any facts in that indictment is evidence of  
6 the crime to which he pled guilty to, just as I will emphasize  
7 to them that the indictment against Mr. Doud is not evidence  
8 that they should accept simply because it was alleged. And  
9 they can accept his guilty plea, but to the extent his guilty  
10 plea is partially, totally, or even greater than what's in that  
11 indictment, that doesn't make the indictment itself and the  
12 allegations in the indictment admissible at this trial.

13 MR. GOTTLIEB: I am sure your Honor can appreciate  
14 this, and I say this recognizing you may want to chop off my  
15 head.

16 THE COURT: No, I definitely don't want to chop off  
17 your head. I want you to keep your head. I need that.

18 MS. ROTHMAN: Am I allowed to take a vote?

19 THE COURT: We are not putting that to a vote, no.

20 You don't convince me, based on this, and I understand  
21 what you want to do and I understand why you want to do it. I  
22 think it is a perfectly legitimate argument for you to make.  
23 It is not an argument in substance that is supported by law.

24 MR. GOTTLIEB: Your Honor, all I can say, the only  
25 person who we could call to clarify it beyond the indictment

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1 would be Michael Paulsen.

2 THE COURT: I know, but that's a collateral matter and  
3 I wouldn't let you call Paulsen just to say that.

4 MR. GOTTLIEB: The reason it's not collateral is the  
5 government brought it out on its direct case that he pled  
6 guilty. We didn't raise it on cross-examination. The  
7 government raised --

8 THE COURT: You should have raised it on  
9 cross-examination. That was the time to raise it. You can't  
10 say now, oh, I remembered something I wanted to ask Ms. Pompeo  
11 so I want to now offer evidence with regard to Ms. Pompeo. You  
12 should have done it when he was on the stand.

13 MR. GOTTLIEB: Your Honor, the only --

14 THE COURT: If that's what you wanted to make clear.  
15 You could have said to him directly, the conspiracy you agreed  
16 to had nothing to do with Mr. Doud. That would have been a  
17 simple question. This afterthought, this afterthought now does  
18 not make admissible the indictment as proof of the substance of  
19 what he pled guilty to.

20 MR. GOTTLIEB: Your Honor, all I can say with regard  
21 to that, the trial is still going on, we are now on the defense  
22 case. And when we're on the defense case, in accordance with  
23 the rules of evidence 803(6), the rules of evidence recognize  
24 exactly what we are trying to do.

25 THE COURT: I don't know any rule of evidence that

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1 says that you can offer, you can offer an indictment as proof  
2 of the allegations in the indictment.

3 MR. GOTTLIEB: So, your Honor --

4 THE COURT: Where do you get that from.

5 MR. GOTTLIEB: 803(A) of the federal rules, public  
6 records.

7 THE COURT: No, no, no. Public records is a general  
8 term and that's fine. But public records does not include that  
9 an indictment is substantive evidence of the crime alleged in  
10 the indictment. You know that that's true.

11 MR. GOTTLIEB: But, your Honor, a public record, the  
12 indictment which is a public record, in subdivision uppercase  
13 (A), it would be a record or statement of a public office if  
14 (A) it sets out: (iii) in a civil case or against the  
15 government in a criminal case, that's where we are now, against  
16 the government in a criminal case, factual findings from a  
17 legally authorized investigation.

18 THE COURT: Right. There is no factual finding from a  
19 legally constituted investigation in an indictment. An  
20 indictment, you know what, I've already told the jury what the  
21 indictment is. It is simply an accusation. It is proof of  
22 nothing. Do you want me to take that back with regard to  
23 Mr. Doud's indictment?

24 MR. GOTTLIEB: Absolutely not. Absolutely not. But  
25 once he was asked about the indictment, what did you plead



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1 guilty to, and --

2 THE COURT: Yes.

3 MR. GOTTLIEB: In fact --

4 THE COURT: You could have asked him at that time  
5 whether or not what he pled guilty to had anything to do with  
6 Mr. Doud. You didn't ask him that. You can't prove that by  
7 putting his indictment in, which again, doesn't say anything  
8 about Mr. Doud, and quite frankly, I'm not even sure what his  
9 answer to that question would have been.

10 MR. GOTTLIEB: Your Honor, listen, I hear you. I  
11 respect it.

12 THE COURT: As long as the record is clear and I  
13 thoroughly considered your argument. You've not convinced me  
14 that this indictment is admissible for that purpose.

15 MR. GOTTLIEB: The only problem that I will make clear  
16 on the record and then we're going to move on, is that the  
17 government's questioning misled the jury.

18 THE COURT: Right. And as I said, even without the  
19 substantive argument, the appropriate response should have been  
20 at the time that the witness was on the stand, for you to clear  
21 that up. Because you could have gotten testimony from that  
22 witness to clear that up. You do not have testimony from any  
23 witness now to clear that up. You forewent that opportunity.  
24 And now you want to do something that you should have done, if  
25 you thought it was important, while the witness was on the

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1 stand. That's my position.

2 All right. So let's proceed with this witness. Are  
3 we ready to proceed? The jury's outside.

4 MR. JANEY: He's down the hallway.

5 THE COURT: Your test has come back negative.

6 MR. JANEY: Thank you. Whatever you did, I got both  
7 my test and the witness's test. They're both negative.

8 THE COURT: Let's bring in the jury and then let's  
9 bring in the witness.

10 (Continued on next page)

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Martinovic - Direct

1 (Jury present)

2 THE COURT: Mr. Janey, will you call your next  
3 witness.

4 MR. JANEY: Yes, your Honor. Thank you. The defense  
5 calls Martin Martinovic.

6 Just a moment. My colleague is getting him from down  
7 the hall.

8 THE COURT: All right.

9 MARTIN MARTINOVIC,

10 called as a witness by the Defendant,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JANEY:

14 Q. Good afternoon, Mr. Martinovic. You can remove your mask.  
15 If you can just be sure that you're close enough to the  
16 microphone or pull it closer to you.

17 A. Okay.

18 Q. Great. Thank you.

19 Mr. Martinovic, who is your employer?

20 A. I am a partner at the firm of Matson Driscoll & Damico  
21 forensic accountants.

22 Q. Is that commonly referred to as MDD?

23 A. Yes, it is.

24 Q. If I refer to it this afternoon as MDD, will you understand  
25 that I'm referring to Matson Driscoll & Damico?

Mlr3dou3

Martinovic - Direct

1 A. Yes.

2 Q. Did there come a time when through MDD you were retained by  
3 the defense for purposes of this case?

4 A. Yes.

5 Q. What was the assignment?

6 A. The assignment was, in terms of scope of engagement, was to  
7 review financial information produced, and review the  
8 compensation of Larry Doud and to determine if there was  
9 financial incentive with a view to sales of controlled versus  
10 non-controlled or even global sales.

11 Q. Why are you testifying here today?

12 A. I guess everybody wants to hear my opinion on it.

13 Q. Fair enough.

14 By way of background, please explain to the jury what  
15 is your occupation.

16 A. I am a forensic accountant.

17 Q. Are you a certified public accountant?

18 A. Yes.

19 Q. In what state do you hold your CPA license?

20 A. New York State.

21 Q. How long have you held your CPA license in New York?

22 A. 2009.

23 Q. When did you start working at MDD?

24 A. I started in our Toronto, Canada, offices in 1998. Moved  
25 to our London office in 2007 and '08 in the U.K., and have been

Mlr3dou3

Martinovic - Direct

1 working at MDD New York since 2008.

2 MR. JANEY: Marking for identification what is  
3 premarked as Defense Exhibit R2. If I can show that to the  
4 parties and to the witness, please.

5 Q. Do you see that there, Mr. Martinovic?

6 A. I do.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. What is it?

10 A. This is my current CV I believe.

11 Q. Do you need to take a further look at it to be sure?

12 A. This is page one of two. Yes. This my current CV.

13 MR. JANEY: Your Honor, at this time the defense  
14 requests that Exhibit R2 be admitted in evidence.

15 THE COURT: Any objection?

16 MR. BURNETT: Objection. It is all hearsay.

17 THE COURT: Overruled. I'll admit it.

18 (Defendant's Exhibit R2 received in evidence)

19 MR. JANEY: If we can publish it to the jury.

20 THE COURT: Yes.

21 Q. Mr. Martinovic, what is your educational background?

22 A. I have a bachelor of commerce degree from the University of  
23 Toronto, graduated in '96. And I am a CPA.

24 Q. Drawing your attention to the first page of what's Exhibit  
25 R2. Just below the area described as professional experience.

Mlr3dou3

Martinovic - Direct

1 Can you read for the jury what it states in the first bullet  
2 there.

3 A. "Professional concentration has been in forensic and  
4 investigative accounting determining, verifying and analyzing  
5 factual matters by the examination of accounting, operating and  
6 financial records, and the interpretation and communication of  
7 these financial facts along with calculations and  
8 recommendations, all in connection with claims under insurance  
9 coverage and in litigation matters."

10 Q. In plain terms, what does that mean?

11 A. That we are asked to review financial records, and come up  
12 with an assessment, typically in economic damage cases in civil  
13 matters, and we work within the insurance litigation field  
14 primarily, but then we also work on litigation matters  
15 involving no insurance.

16 Q. To be clear, have you worked non-insurance litigation  
17 matters for forensic and investigative accounting assignments?

18 A. Yes.

19 Q. What type of non-insurance litigation matters have you  
20 performed forensic and investigative matters?

21 A. Primarily breach of contract.

22 Q. Are there any others?

23 A. Not that I can recall.

24 Q. In what industries have you performed forensic and  
25 investigative accounting?

Mlr3dou3

Martinovic - Direct

1 A. Well, as you can see with bullet point or arrow two, that's  
2 a cross section of various industries I've worked in.

3 Q. Can you describe it for the jury.

4 A. Did you want me to read this out?

5 Q. Sure.

6 A. "Industry experience in agriculture, automotive, casino,  
7 cereal, chemical, communication, computer, concrete,  
8 construction, dental, energy, fast food, fertilizer, food  
9 processing, furniture, garment, glass, hospital, hotel --"  
10 shall I read the rest or focus on the fact that it says  
11 pharmaceutical at one point?

12 Q. Well, have you done this work in the pharmaceutical  
13 industry?

14 A. Yes.

15 Q. In terms of the nature of the assignment, so that the jury  
16 understands, are these assignments mere theoretical exercises  
17 or are they actual forensic and investigative accounting  
18 assignments leading to actual business decision making?

19 A. It is the latter.

20 Q. How would you describe that?

21 A. Primarily what we do is we work primarily with the  
22 insurance industry. So for instance, one of my first exposures  
23 in the U.S. and in New York specifically is due to the 9/11  
24 incident, where our office had 600 commercial insurance claims,  
25 including the buildings themselves, the two Silverstein claims.

Mlr3dou3

Martinovic - Direct

1 Q. We can take this down. Thank you.

2 Within your experience in forensic and investigative  
3 accounting, have you ever been retained as an expert witness?

4 A. Yes.

5 Q. For the jury, can you explain what some of those  
6 assignments have been?

7 A. Again, focusing on the insurance industry. One litigation  
8 involved a bad-faith allegation by an insurance policy holder,  
9 commercial insurance policy holder against its insurers. I was  
10 involved in the quantification of what was being sought by  
11 plaintiffs and in rebutting that. Other matters include  
12 insurance disputes amongst insurers themselves in terms of  
13 damages.

14 Q. Have you ever been a testifying expert at trial?

15 A. Yes.

16 Q. When was the last time you were a testifying expert at  
17 trial?

18 A. I believe May of 2017.

19 Q. Where and in what court was that?

20 A. Lafayette County in Louisiana.

21 Q. Prior to then, had you been a testifying expert at trial?

22 A. I was -- I did testify at a bankruptcy proceeding in Corpus  
23 Christi, Texas, in 2009.

24 MR. JANEY: At this time the defense moves to qualify  
25 Mr. Martinovic as an expert in the area of financial analysis.



Mlr3dou3

Martinovic - Direct

1 THE COURT: Any objection?

2 MR. BURNETT: No objection.

3 THE COURT: You can inquire on that basis.

4 Q. Mr. Martinovic, prior to being engaged for this case, had  
5 you done any work for Rochester Drug Co-Operative?

6 A. No.

7 Q. If I refer to Rochester Drug Co-Operative as RDC, will you  
8 know what I mean?

9 A. Yes.

10 Q. Prior to being engaged for this case, had you ever been  
11 retained by the defendant Larry Doud to perform any work?

12 A. No.

13 Q. In terms of the work that you've done for this case, is  
14 there anyone that assisted you in the work?

15 A. Yes.

16 Q. Who are those persons?

17 A. Two female colleagues. First one would be Kimberly Tan,  
18 spelled T-A-N. The second colleague would be Alicia Lu, L-U.

19 Q. To be clear, are they employees of MDD?

20 A. Yes.

21 Q. Did any outside vendor or firm assist you in the work that  
22 you have done in this case?

23 A. No.

24 Q. Is MDD being compensated for its work in this case?

25 A. Yes.

Mlr3dou3

Martinovic - Direct

1 Q. Does that compensation include your testimony today?

2 A. Yes.

3 Q. Mr. Martinovic, how are you being compensated?

4 A. On an hourly basis based on the number of hours I've  
5 charged to the matter times my billing rate.

6 Q. Approximately how much have you billed to date?

7 A. I would estimate about 125,000.

8 Q. How would you reflect that in terms of number of hours  
9 you've spent on your analysis?

10 A. Having checked our billing system, through this past  
11 Saturday, about 650 hours.

12 Q. Does that amount MDD gets paid depend in any way on the  
13 opinions you give in this courtroom?

14 A. No.

15 Q. Does the amount you get paid depend in any manner on the  
16 outcome of the trial in this case?

17 A. No.

18 Q. Once being engaged for the case, in general terms, what  
19 materials did you receive to support your analysis?

20 A. We initially received a batch of financial information from  
21 your law firm. That was initially until we got access to a  
22 document management system containing around 3 million  
23 documents produced on the case. And this would have been  
24 access that your law firm provided me.

25 Q. Just focusing on the financial documents for a moment.

Mlr3dou3

Martinovic - Direct

1 Were these financial documents RDC financial materials produced  
2 to the defense by the government?

3 A. Yes.

4 Q. And what sort of financial materials were these more  
5 particularly?

6 A. For the sake of my scope of my engagement, we received  
7 financial statements, annual reports, we received employment  
8 contracts concerning Larry Doud, received access to sales  
9 information.

10 Q. Did there ever come a time that you came to review RDC  
11 financial materials that were subpoenaed by the defense, in  
12 other words, materials that were obtained by way of court  
13 order, signed by the presiding judge, Judge Daniels in this  
14 case?

15 A. Yes.

16 Q. What were those materials?

17 A. Essentially, it included five very large, what's called  
18 .csv files, similar to Excel files, which contained about 21  
19 million rows of sales data.

20 Q. Were those materials important?

21 A. Yes.

22 Q. Why were they important?

23 A. Because on a granular level it was able -- it made, it  
24 allowed us to be able to analyze all the sales on an individual  
25 sales basis, and if a sale to a pharmacy involved 10 different

Mlr3dou3

Martinovic - Direct

1 product items, it gave us that level of granularity in terms of  
2 how much of the product was sold, times price, equals total  
3 dollar amount for each item sold on an invoice. This allowed  
4 us to then build what we call the sales database, as you may  
5 have seen in my findings. That allowed us to then be able to  
6 segregate sales between controlled sales, not controlled sales,  
7 and then segregate it even further as we saw fit.

8 Q. Would your financial analysis have been complete or  
9 accurate in the absence of that subpoenaed information?

10 MR. BURNETT: Objection.

11 THE COURT: I'm sorry. Could you restate that  
12 question?

13 Q. Would your financial analysis have been complete or  
14 accurate in the absence of the subpoenaed information?

15 THE COURT: You can answer.

16 A. Okay. Most likely not.

17 Q. When you reviewed the financial data, Mr. Martinovic, for  
18 purposes of the assignment, did you ever deem it important to  
19 review information about the cost of the products involved in  
20 this case, namely oxycodone or fentanyl?

21 A. Yes, as part of our scope of review, we would be interested  
22 in costs by product, all products.

23 Q. Why would you be interested in cost data?

24 A. The reason for that is, based on Mr. Doud's compensation,  
25 specifically his bonus calculation, it starts with net sales,

Mlr3dou3

Martinovic - Direct

1 you would deduct out costs or what's called costs of good sold,  
2 if you've seen a profit and loss statement or an income  
3 statement, to arrive at what we call accounting gross margin or  
4 gross profit.

5 Q. If we could have Government Exhibit 903, please. Looking  
6 at Government Exhibit 903, Mr. Martinovic, what's been admitted  
7 in evidence, can you use this chart to explain why cost data  
8 matters and the potential impact of that cost data on  
9 profitability for the wholesalers?

10 A. Yes. So, as I understand it, RDC was a wholesaler. So it  
11 would fit within box number two in the supply chain. That  
12 starts with manufacturers, then that flow drugs, as you can see  
13 with the black arrow in the diagram, goes to wholesaler. So in  
14 this instance, we have RDC as wholesaler, RDC would have  
15 purchased drugs from the manufacturers, that represents a cost  
16 to RDC. Then RDC would then sell those drugs to its customer  
17 base, which features pharmacies, and that would allow us to  
18 understand RDC selling to the pharmacies, what are they selling  
19 at versus the cost from the manufacturers, to establish if  
20 there was any profit made on those sales.

21 MR. JANEY: We can take that down.

22 Q. Do you have an opinion about profitability calculations  
23 that failed to reflect cost data?

24 A. Sorry. Can you repeat the question?

25 Q. Do you have an opinion about profitability analyses that

Mlr3dou3

Martinovic - Direct

1 failed to reflect cost data?

2 A. I suppose I would have a problem with it.

3 Q. What is your opinion in that scenario?

4 A. Well, to establish profitability, as I suggested, at least  
5 purchase sales of the drug products less costs, if you don't  
6 have the cost, you can't really determine profitability.

7 Q. In the course of the assignment here, did you review any  
8 e-mails in this case?

9 A. I did.

10 Q. Why did you review e-mails?

11 A. As a result, as we went through the search of the database  
12 of documents provided to us, we wanted to examine costs on a  
13 granular basis, similar to the sales data, to be able to assess  
14 the profitability on the drug-by-drug basis, a class of  
15 drug-by-drug basis, controlled versus not controlled basis.  
16 And we are somewhat baffled that we didn't have any information  
17 to allow us to do that. So, without that information, then we  
18 have to look at other evidence to consider, to come up with  
19 some sort of view.

20 Q. So, we'll come back to that part. But to be clear for the  
21 jury, with respect to the e-mails that you reviewed, to be  
22 clear, were these RDC e-mails?

23 A. Yes.

24 Q. Did you ever review -- withdrawn.

25 Did your review of materials also include information

Mlr3dou3

Martinovic - Direct

1 from the government's expert witness, David Cutler, anticipated  
2 to be in support of his testimony in this case?

3 A. I've seen his materials.

4 Q. What was the form of that information?

5 A. Largely very large data set studies of drug sales, very  
6 granular, number of orders filled, quantities sold, and sales  
7 analysis.

8 Q. Among the Mr. Cutler related information, were slides  
9 included in your review?

10 A. Sorry. Can you repeat that?

11 Q. Were PowerPoint slides included?

12 A. Yes.

13 Q. Were you provided any transcripts from the testimony in  
14 this case as a part of what you reviewed?

15 A. Yes, I was provided David Cutler's testimony.

16 Q. Did you review both the direct examination and the  
17 cross-examination components of that testimony?

18 A. Yes.

19 Q. In some form or manner, was your review of these various  
20 materials reflected in your analysis and conclusions?

21 A. To the extent it factored, yes, potentially.

22 MR. JANEY: If we could have Government Exhibit 903,  
23 please, and in particular slide eight. This has been admitted  
24 in evidence.

25 Q. Now, Mr. Martinovic, did you make this slide?

Mlr3dou3

Martinovic - Direct

1 A. No.

2 Q. Do you know who made this slide?

3 A. Yes.

4 Q. How do you know?

5 A. Because this would be part of David Cutler's work product  
6 that I've been provided.

7 Q. Now, does this chart reflect opioid sales at RDC, to your  
8 understanding?

9 A. Yes.

10 Q. Did viewing this chart, this slide eight, did the  
11 controlled sales at RDC include drugs other than opioids?

12 A. Yes.

13 Q. Well -- withdrawn.

14 The slide notwithstanding, do you have an  
15 understanding that controlled sales at RDC included controlled  
16 drugs other than opioids?

17 A. Yes.

18 Q. So, we'll come back to that in a moment. But holding that  
19 aside, drawing your attention to the left-hand side of the  
20 slide with the label sales revenue by product type 2010 to  
21 2016. Do you see that there?

22 A. I do.

23 Q. And drawing your attention in particular, just by way of  
24 example, to the 2015 year. Do you see that?

25 A. I do.



Mlr3dou3

Martinovic - Direct

1 Q. Is that the peak sales revenue year indicated by this chart  
2 for sales?

3 A. Yes.

4 Q. Based on the chart, and your analysis for this case, what  
5 type of sales, opioids versus what's labeled as all other  
6 products, are driving the revenue at RDC in 2015?

7 A. I'm sorry?

8 THE COURT: Can you get a little closer to the mic.  
9 Keep your voice up.

10 A. Can you repeat the question?

11 Q. Sure. Viewing the chart, opioids versus all other  
12 products, as between the two, what's driving the revenue at RDC  
13 in 2015?

14 A. It's going to be the all other products.

15 Q. And what percentage of the business is non-opioid sales in  
16 2015?

17 A. Well, looking at the graph on the right-hand side suggests  
18 about 89.2 percent.

19 Q. In sales dollars, by comparison, how much does the opioid  
20 sales on other hand represent?

21 A. 241 million.

22 Q. And again, viewing the slide, considering the slide and  
23 based on your investigation and review, and based on your years  
24 of experience, do you have an opinion as to what type of sales  
25 overall drove the business at RDC in 2015?

Mlr3dou3

Martinovic - Direct

1 MR. BURNETT: Objection.

2 THE COURT: Just going to sustain the objection as to  
3 the form of the question. I'm not sure I understand what  
4 "drove" means. Can you rephrase that.

5 Q. Do you have an opinion with respect to 2015 as to what the  
6 majority sales are reflected by as between opioids and all  
7 other products?

8 A. All other products.

9 Q. And same question for 2016?

10 A. Same answer.

11 Q. Can you state it?

12 A. That all other products were driving sales in 2016.

13 Q. And going back in time, same question for 2010?

14 A. All other products are driving sales.

15 Q. In 2011, same question?

16 A. All other products are driving sales.

17 Q. Same question for 2012?

18 A. All other products are driving sales.

19 Q. Same question for 2013?

20 A. All other products are driving sales.

21 Q. Same question for 2014?

22 A. All other products are driving sales.

23 Q. Looking at this exhibit, and based on your investigation  
24 and review for this case, and based on your years of

25 professional experience, do you have an opinion as to what type

Mlr3dou3

Martinovic - Direct

1 of sales for the entire time frame, 2010 to 2016, largely  
2 constituted sales at RDC?

3 A. All other products.

4 MR. JANEY: We can take this down. In the course  
5 of -- well. Marking for identification what's premarked as  
6 Defense Exhibit R1. Showing it to the parties and just to the  
7 witness.

8 Q. Mr. Martinovic, do you recognize this document?

9 A. I do.

10 Q. Does this document reflect a summary of the voluminous  
11 materials that you testified about that you reviewed, in part  
12 at least?

13 A. Yes.

14 Q. What is this?

15 A. These are my findings based on my scope of engagement.

16 MR. JANEY: Your Honor, we request that Defense  
17 Exhibit R1 be received in evidence.

18 MR. BURNETT: No objection.

19 THE COURT: It will be admitted in evidence.

20 (Defendant's Exhibit R1 received in evidence)

21 Q. If we can publish to the jury.

22 Mr. Martinovic, drawing your attention to slide two.  
23 If we can scroll it up a little so it can be more effectively  
24 seen. Slide two here, Mr. Martinovic, is labeled annual RDC  
25 sales - amounts. Do you see that?

Mlr3dou3

Martinovic - Direct

1 A. I do.

2 Q. Please describe to the jury the information that's  
3 reflected here on slide two.

4 A. This basically provides a high-level recap of our analysis  
5 of the sales. As forensic accountants or anything in the  
6 exercise we always start with financial statements to provide  
7 us a view, audited financial statements, to give us an idea of  
8 what sales should look like in terms of our analysis. And what  
9 we did, as I mentioned earlier, we received via the subpoena  
10 from RDC five .csv files, about three gigabytes of sales data,  
11 21 million rows. And in order to, with our aim of  
12 understanding controlled substance sales versus non-controlled  
13 sales, we built up our analysis to be able to make a  
14 segregation of those two types of sales.

15 Q. Drawing your attention to the far-right side, which is  
16 labeled controlled sales per .csv. Can you explain for the  
17 years you have outlined here, 2011 to 2017, the relationship  
18 between the controlled sales versus the non-controlled sales.

19 A. Well, as you can see with the numbers, we want to also  
20 demonstrate on a percentage basis, I mean, you had controlled  
21 sales ranging from 9 percent to as high as 16 percent in 2014  
22 before they then declined to 11 percent of global sales.

23 Q. This statistic here for controlled sales, does it include  
24 all controlled sales, including oxycodone and fentanyl?

25 A. Yes.

Mlr3dou3

Martinovic - Direct

1 Q. Is it specific to oxycodone and fentanyl?

2 A. Fentanyl and oxycodone would be a subset of those sales.

3 Q. So, does this number provide a broader number, it's all  
4 controlled sales?

5 A. It does.

6 Q. Drawing your attention to page three, labeled annual RDC  
7 sales - line graph view. Please explain to the jury what this  
8 graph depicts.

9 A. This graph takes the numbers that appeared on the previous  
10 slide, and just provides a plot line to demonstrate the growth  
11 in sales, all sales, but certainly the prominent item of sales  
12 or type of sales that stand out is non-controlled substance  
13 sales where you can see that on a steeper incline in growth.

14 Q. Mr. Martinovic, are you familiar with a term called the  
15 80-20 rule?

16 A. I guess there's various 80-20 rules.

17 Q. What is the 80-20 rule as you understand it in your  
18 experience?

19 A. Are with you talking in the financial --

20 Q. In the financial terms, yes.

21 A. I mean, sometimes, well in our industry, with insurance  
22 especially, 80 percent of the claims may be 20 percent of the  
23 volume. And sometimes big, big claims, 20 percent of the  
24 claims could be 80 percent of the financial value.

25 Q. Do you know whether RDC sales can be explained by the 80-20

Mlr3dou3

Martinovic - Direct

1 rule in your opinion?

2 MR. BURNETT: Objection.

3 THE COURT: I'm going to sustain as to the form of the  
4 question.

5 A. I don't know how to answer that.

6 THE COURT: No.

7 MR. JANEY: The question is withdrawn.

8 Q. In your review, in using this slide, Mr. Martinovic, was  
9 there a concentration of customers with respect to the  
10 controlled sales revenue?

11 A. To use 2015 as an example, because that sort of stood out  
12 for me and my team in terms of growth. Where we see revenue  
13 that goes from over a billion and then jumped to 2 billion. We  
14 kind of looked at 2015 in an isolated way. In controlled  
15 sales, specifically Schedule II where opioids and fentanyl  
16 would be a part of it, there was something like 750 customers,  
17 but certainly one standout customer, and that would be Linden  
18 Care.

19 Q. And for the jury, can you explain more about your  
20 observations in the data with respect to Linden Care? And you  
21 can use your example of 2015.

22 A. Yes. I mean, I believe we -- it's consistent with this  
23 graph, but, about 260 million sales calendar year '15 -- mind  
24 you, this is fiscal year end, so there will be some slight  
25 differences. But, if there was 260 million in sales of

1 Schedule II drugs, two of which would be oxycodone and  
2 fentanyl, Linden Care accounted for about 148 million, about  
3 55 percent.

4 (Continued on next page)

M1RBDOU4

Martinovic - Direct

1 Q. And if we could go back to the prior slide.

2 Again, viewing the controlled sales, and if we can  
3 just look at 2015 because that's the example Mr. Martinovic was  
4 giving. Can we pop that out. I'm learning the technology as I  
5 go along, Mr. Martinovic. I appreciate your patience.

6 To try to get some context for the numbers you're  
7 describing, viewing to the far right in 2015, the 280 plus  
8 million dollars there that are in that column.

9 Can you just explain again if you would the Linden  
10 Care aspect of those sales dollars?

11 A. Well, as I mentioned to you, as you can see on the first  
12 column on the left, this is fiscal year end March of 2015, so  
13 the analysis that I was just mentioning would be slightly  
14 afterwards because it would be all of 2015.

15 so, slight differences, this is 280 million in this  
16 view, versus the \$260 million that I was mentioning. And to  
17 sort of nestle in my observations on the calendar year basis,  
18 Linden Care would have made up probably close to 50 percent, if  
19 not more, of sales in that year on controlled substances. Now  
20 that's all controlled substances. What I had mentioned men  
21 earlier was schedule two only.

22 Q. If we could go back to slide three, please.

23 Now, we've been very specific. Let's draw back and be  
24 a bit more general for a moment, Mr. Martinovic, and focusing  
25 on this line here, the line graph view on the controlled sales



M1RBDOU4

Martinovic - Direct

1 line on the chart, and what's the color of the controlled sales  
2 line?

3 A. It's the green one.

4 Q. The green line at the bottom?

5 A. Yes.

6 Q. Viewing that particular line, based on your analysis and  
7 investigation and in your professional experience, do you have  
8 an opinion about the growth of the controlled sales over the  
9 timeframe on this chart?

10 A. Yes, it certainly grew.

11 Q. I'm sorry. What is your opinion?

12 A. That controlled substances sales did grow.

13 Q. And how would you describe the growth that that line  
14 portrays?

15 A. Well, I suppose I look at that compared to non-controlled,  
16 and it's at a much slower pace of growth versus non-controlled.

17 Q. Focusing on the line above now that you mentioned in making  
18 the comparison, is the line describing the non-controlled  
19 sales -- and to take a step back, what color is the  
20 non-controlled sales line?

21 A. It is blue.

22 Q. So that's the line that's immediately above the green, the  
23 controlled sales line?

24 A. Yes.

25 Q. How would you describe -- is the blue line steeper than the

M1RBDOU4

Martinovic - Direct

1 green line?

2 A. Yes.

3 Q. And what should we take away from the steepness of the blue  
4 line as compared to the green line?

5 A. That non-controlled sales as part of overall sales, that's  
6 where all the action was in terms of growth, or majority of  
7 action in terms of RDC's overall sales.

8 Q. We can take this down, please.

9 Mr. Martinovic, switching gears slightly. In your  
10 review and investigation for this case, did there come a point  
11 where you reviewed an employment agreement between Larry Doud  
12 and RDC?

13 A. Yes.

14 Q. Showing the witness what's been admitted in evidence as  
15 Government Exhibit 270.

16 Mr. Martinovic, if you can, this is a multipage  
17 document, so if you can look at this document and then I'll ask  
18 a question.

19 Did you have a chance to take a look at it,  
20 Mr. Martinovic?

21 A. I did.

22 Q. Does this appear to be the employment agreement that you  
23 reviewed?

24 A. Yes.

25 Q. Now, drawing your attention to section 4 of Exhibit 270

M1RBDOU4

Martinovic - Direct

1 that I believe is on page 2, do you recall this section 4,  
2 Mr. Martinovic?

3 A. Yes.

4 Q. What do you recall this section to be?

5 A. It sets out Mr. Doud's compensation starting with annual  
6 base compensation that is on schedule A to this employment  
7 agreement, and then also sets out the methodology for  
8 calculating Mr. Doud's annual bonus.

9 Q. Can you describe based on your review of the employment  
10 agreement how that calculation works or worked?

11 A. Yes, it's indicated in B under annual bonus. It's 2 1/2  
12 percent of adjusted net earnings, which is then defined in the  
13 last paragraph in this view as meaning the amount of RDC's  
14 annual net earnings before patronage dividends and federal  
15 income taxes for RDC's annual audited financial statements.

16 Q. If we can remove this and have Defendant's Exhibit R1,  
17 please, and in particular slide 5.

18 Now, the information that you were describing viewing  
19 Mr. Doud's employment agreement and particularly section 4,  
20 that is his bonus calculation per the employment agreement, did  
21 you reflect that information in your review for your  
22 calculations of his bonus?

23 A. Yes.

24 Q. Please explain your approach using this slide?

25 A. If you look in the first broad section of columns which

M1RBDOU4

Martinovic - Direct

1 says bonus amount alone, this is the amount of bonus. The  
2 columns that are right in the middle are the calculated bonuses  
3 that we saw produced in terms of the calculations on the total  
4 amount of bonus that Mr. Doud received, and you see that total  
5 amount.

6 And, for instance, using 2015 versus 2014, I found  
7 that interesting, as I mentioned earlier. Our team found it  
8 interesting where Larry's bonus overall doubled from roughly  
9 583,000 to 1.1 million.

10 Q. Now, in your review and analysis for this case and in the  
11 calculation of the bonus, did you review cost data?

12 A. We had limited documents to review cost data. When we did  
13 our analysis on a global basis, we found that it was well  
14 overstated, which meant that it wasn't reliable.

15 Q. So let's unpack that. Did you find any evidence that  
16 controlled drugs were sold at cost or cost minus?

17 MR. BURNETT: Objection.

18 THE COURT: Overruled. You can answer.

19 A. We saw evidence in the way of emails amongst Mr. Doud and  
20 his team in terms of just day-to-day business, talking about  
21 customers where terms like at cost and cost minus 4 percent  
22 were used.

23 Q. And ultimately were you able to use this at cost or cost  
24 minus variable in your analysis at all?

25 A. No.

M1RBD0U4

Martinovic - Direct

1 Q. Were you able to use it in your calculations of the  
2 contribution controlled drugs made to Mr. Doud's bonus?

3 A. No.

4 Q. And again why not?

5 A. Because we just -- there was insufficient documentation,  
6 and whatever documentation that we did have did not allow us to  
7 do a global review of cost to be able to segregate the impact  
8 of sales of control versus non-control.

9 Q. Without the sufficient cost data information, what were you  
10 left to rely upon?

11 A. Then we have to assume that costs and profit margins,  
12 whether they be based on control versus non-controlled, we had  
13 to just use the cost and the profitability of the overall  
14 global sales in the financial statement.

15 Q. Is that similar to Mr. Cutler's method?

16 A. In my findings, I'm allocating the portion of bonus related  
17 to control and uncontrolled on a sales lying basis, so I did  
18 not look at profitability. I did not look at costs, but I did  
19 see that in one of the slides Professor Cutler had that the  
20 bonus that was allocated to controlled sales, his analysis is  
21 very similar to my analysis, within 4 percent.

22 Q. Where in both your -- withdrawn. Where you were not able  
23 to find sufficient cost data in the data that was provided to  
24 you, is there a potential weakness in that approach for the  
25 purpose of correctly calculating the contribution of controlled

M1RBDOU4

Martinovic - Direct

1 drugs to Mr. Doud's bonus?

2 A. Yes. Because as you saw in the employment contract, it  
3 says, the basis for calculating bonuses on that earnings basis,  
4 so both myself and Professor Cutler only looked at it on a  
5 sales basis, did not consider product cost, deduct them to  
6 calculate what I called earlier accounting gross profit. Then  
7 there's all the other expenses, like your payroll and your rent  
8 if you will to arrive at net earnings.

9 So, I was not able to segregate the impact on that  
10 earnings outside of simply looking at sales between  
11 non-controlled and controlled.

12 Q. Even bearing in mind that limitation, with respect to the  
13 percentage allocations of controls that you describe here to  
14 Mr. Doud's bonus, based on your investigation and analysis and  
15 your professional experience, do you have an opinion about the  
16 degree to which Larry Doud was incented to sell controlled  
17 drugs based on his bonus structure?

18 MR. BURNETT: Objection.

19 THE COURT: I'm going to sustain as to the form of  
20 that question.

21 Q. Given your analysis, do you have an opinion that Mr. Doud  
22 was incented to sell controlled drugs based on his bonus  
23 structure?

24 MR. BURNETT: Same objection.

25 THE COURT: I'm going to sustain the objection. I'm

M1RBDOU4

Martinovic - Cross

1 not sure he's qualified to make that opinion.

2 MR. JANEY: One moment, your Honor.

3 Q. Viewing the percentage allocation of Mr. Doud's bonus for  
4 each of the years in this period, 2011 to 2017, what was -- as  
5 between controls and non-controls, what contributed most to  
6 Mr. Doud's actual bonus?

7 A. It would be non-controlled.

8 Q. With the limitation that we've described?

9 A. Yes.

10 MR. JANEY: No further questions at this time, your  
11 Honor.

12 THE COURT: Cross examination.

13 MR. BURNETT: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. BURNETT:

16 Q. Good afternoon, Mr. Martinovic.

17 A. Good afternoon.

18 Q. We haven't met before, right?

19 A. I don't think so.

20 Q. Neither do I. I'm Tom Burnett. Nice to meet you.

21 A. Nice to meet you as well.

22 Q. And you met with some of the defense attorneys in this case  
23 before as you discussed right?

24 A. Yes.

25 Q. Including Mr. Janey who was just questioning you?

M1RBDOU4

Martinovic - Cross

1 A. Correct.

2 Q. You met with them a number of times in the course of  
3 preparing for this case?

4 A. A couple of times.

5 Q. Did you meet with the defense attorneys this morning?

6 A. I did.

7 Q. Around what time?

8 A. 9:15 in the morning.

9 Q. About how long was that meeting?

10 A. One hour.

11 Q. Isn't it true that yesterday you told the defense attorneys  
12 you had an immovable conflict so you couldn't be here until  
13 1:30?

14 A. I did mention --

15 MR. JANEY: Objection, your Honor.

16 THE COURT: I'm going to sustain the objection as  
17 irrelevant for the jury's determination.

18 Q. I want to start with a bit about your background. You  
19 never worked at Rochester Drug Co-Operative, right?

20 A. No, I have not.

21 Q. And you weren't part of the finance team there?

22 A. No.

23 Q. You weren't ever hired as a consultant by RDC?

24 A. No.

25 Q. So you're a part of this case because the defendant



M1RBDOU4

Martinovic - Cross

1 Mr. Doud's team hired you to be part of it, right?

2 A. Right.

3 Q. Not because you had any independent knowledge of RDC or how  
4 the company worked?

5 A. No independent knowledge.

6 Q. And I want to make sure I'm clear on the scope of your  
7 testimony. You mentioned earlier that you reviewed the  
8 testimony and the slides of Professor David Cutler; is that  
9 correct?

10 A. Yes.

11 Q. Let's pull up Government Exhibit 903 on the monitors here  
12 and flip ahead to slide 7.

13 Just to be clear, you haven't compared RDC's sales of  
14 opioids to other actors in the industry, right?

15 A. No.

16 MR. JANEY: Objection, your Honor. This is beyond the  
17 scope?

18 THE COURT: Overruled. He can answer.

19 Q. And if we look ahead to slide 12. You haven't looked at  
20 data from RDC's orders of interest system, right?

21 A. No.

22 Q. And if we go ahead to slide 18. You haven't analyzed what  
23 percentage of RDC's opioid sales in 2012 and 2016 went to  
24 customers that were terminated after Mr. Doud left the company,  
25 right?

M1RBDOU4

Martinovic - Cross

1 A. I have not analyzed it, no.

2 Q. So these are parts of Professor Cutler's testimony that  
3 sitting here today you don't necessarily have any issue with,  
4 right?

5 A. Correct.

6 MR. JANEY: Objection to the form. That's not his  
7 testimony.

8 THE COURT: Overruled. He answered the question. The  
9 answer will stand. You can redirect him if you wish.

10 Q. Let's go to your presentation which I believe is now in  
11 evidence as Defense Exhibit R1. Let's turn to the second slide  
12 of this presentation.

13 This is the chart you put together where you took a  
14 look at the sales of controlled substances and non-controlled  
15 substances over time from RDC, correct?

16 A. Yes.

17 Q. The defense asked you to put together some charts that  
18 separated the controlled sales from the non-controlled sales;  
19 is that right?

20 A. Yes.

21 Q. So let's focus in by looking at the controlled substance  
22 sales which is the column labeled controlled substance sales  
23 per CSV. You see that?

24 A. Yes.

25 Q. Let's zoom in on the full control section here. It's fair

M1RBD0U4

Martinovic - Cross

1 to say that sales of controlled substances rose considerably  
2 between 2012 and 2017, right?

3 A. They grew, yes.

4 Q. They started out say in 2012 at \$83 million; is that right?

5 A. Yes.

6 Q. And they peak at about \$310 million in looks like 2016,  
7 correct?

8 A. Yes.

9 Q. Ands that's a growth of over three times, right?

10 A. Yes.

11 Q. And between 2012 and 2017, the total line at the bottom  
12 here shows that RDC's revenue was over 1.2 billion from  
13 controlled substances sales, correct?

14 A. Yes.

15 Q. Now, this chart here doesn't show information about  
16 schedule two controlled substance sales, correct?

17 A. No, it doesn't.

18 Q. Now, those are the schedule two substances include opioids,  
19 right?

20 A. Yes.

21 Q. Now, you actually did an analysis that included information  
22 broken out for schedule two substances, correct?

23 A. We had some analysis done breaking it up by schedule, yes.

24 Q. I'd like to show for the witness and the parties what's  
25 been marked for identification as Government Exhibit 1245.

M1RBDOU4

Martinovic - Cross

1 This is one of the charts that you and your team put together  
2 earlier in this case, correct?

3 A. Yes.

4 Q. And this is the chart that you were referring to that has  
5 the schedule two controlled substance sales actually broken  
6 out?

7 A. Yes.

8 MR. BURNETT: Your Honor, at this time the government  
9 offers Exhibit 1245.

10 THE COURT: Any objection?

11 MR. JANEY: No objection.

12 THE COURT: It will be admitted into evidence.

13 (Government's Exhibit 1245 received in evidence)

14 Q. Let's please publish the chart for the jury and zoom in on  
15 column I. This is the column that shows those schedule two  
16 substance sales, right?

17 A. Yes.

18 Q. So they started at about 38 million in 2012; is that right?

19 A. Yes.

20 Q. Go up to 49 million in 2013; is that correct?

21 A. Yes.

22 Q. Then they get up to \$210 million in 2015, right?

23 A. Yes.

24 Q. Reach a peak of about 231 million in 2016; is that correct?

25 A. Yes.

M1RBDOU4

Martinovic - Cross

1 Q. So it's fair to say RDC made several hundreds of millions  
2 of dollars selling schedule two controlled substances between  
3 2012 and 2017?

4 A. Yes.

5 Q. And just doing a little mental math here, it's about \$815  
6 million or so on these substances?

7 A. Yes.

8 Q. Now, can we also agree that RDC's growth in these schedule  
9 two sales between 2012 and 2016 was significant?

10 A. Yes.

11 Q. You said a minute ago it was about three times for  
12 controlled substances overall, correct?

13 A. Yes.

14 Q. And here starting in 2012 that's 38 million, right?

15 A. Yep.

16 Q. Going to 2016, it's 231 million; is that right?

17 A. Yes.

18 Q. So it's fair to say that schedule two substances during  
19 that time period grow by over six times, right?

20 A. Close to that, yeah.

21 Q. Now, let's go back to R1, the chart we were talking about  
22 earlier.

23 Do you recall you were asked on direct examination  
24 when you were looking at the line chart what growth rate was  
25 more significant between controls and non-controls?

M1RBDOU4

Martinovic - Cross

1 A. I do recall the question.

2 Q. And you said non-controls is more significant, right?

3 A. Yes.

4 Q. We can actually do the math and look at the numbers, right?

5 A. Yes.

6 Q. And it was three times for controls, six times for schedule  
7 two controls; is that right?

8 A. Yes.

9 Q. Let's look at the amounts here for the non-controlled  
10 substances starting -- zoom in on that section, in 2012 it's  
11 \$761 million; is that right?

12 A. Yes.

13 Q. And then by 2016, it's up to just a shade over \$2 billion;  
14 is that correct?

15 A. Yes.

16 Q. So that's a growth of basically two and a half times,  
17 right?

18 A. Yes.

19 Q. So it's fair to say that the growth rate on schedule two  
20 substances and on controlled substances was higher than on  
21 non-controlled substances during this time period?

22 A. Based on that comparison, yes.

23 Q. So it's easier to look at the numbers when you're figuring  
24 that out, not the lines, right?

25 A. Sometimes, yes.

M1RBDOU4

Martinovic - Cross

1 Q. Let's stay on this slide and go over back to the controlled  
2 substance sales. I want to take a look in on the percentage of  
3 total sales.

4 Now, the percentage of total sales, that just means  
5 you looked at what percentage of RDC's total revenue was coming  
6 from the sale of controlled substances, correct?

7 A. Yes.

8 Q. And it's fair to say here that over time the controlled  
9 substances made up a higher share of RDC's total sales,  
10 correct?

11 A. Yes.

12 Q. So 2011, 2012, it's about 9 1/2 percent; is that fair?

13 A. Yes.

14 Q. And then the next year it's almost 12 percent, correct?

15 A. Yes.

16 Q. The following year it gets up to 16 percent?

17 A. Yes.

18 Q. And then it's about 13 1/2 percent over the next couple of  
19 years?

20 A. Yes.

21 Q. So it's fair to say that controlled substances made up a  
22 higher share of RDC's business in 2014, 2015 and 2016 than they  
23 did in these earlier years, like 2011, 2012?

24 A. Yes.

25 Q. And that was the period when RDC's sales of controlled

M1RBD0U4

Martinovic - Cross

1 substances and schedule two controlled substances was growing  
2 at a faster rate than its sales of non-controlled substances,  
3 right?

4 A. Yes.

5 Q. That's why you expect the percentage to go up?

6 A. Mm hm.

7 Q. When you put this chart together, you drew a separation  
8 between controlled substances and non-controlled substances,  
9 right?

10 A. Yes.

11 Q. And now earlier on direct you were saying non-controlled  
12 substances drove sales; is that correct?

13 A. Yes.

14 Q. And when you say drove, you just mean one is bigger than  
15 the other, correct?

16 A. Yes.

17 Q. Well, let's step back. Is it fair to say that RDC's  
18 business was selling both controlled substances and  
19 non-controlled substances to pharmacies, correct?

20 A. Yes.

21 Q. They had pharmacy customers, right?

22 A. Yes.

23 Q. Lots of those customers bought both types of drugs,  
24 correct?

25 A. Yes.



M1RBDOU4

Martinovic - Cross

1 Q. And, in fact, you're aware that because RDC was a full line  
2 distributor, its goal was having pharmacies purchase everything  
3 from RDC instead of from their competitors, correct?

4 MR. JANEY: Objection. Beyond the scope of the  
5 testimony. None of that was elicited from the witness.

6 THE COURT: Overruled. You can answer.

7 A. Repeat the question.

8 Q. Sure. Are you aware that because RDC was a full line  
9 distributor, its goal was having pharmacies purchase everything  
10 from RDC instead of its competitors, correct?

11 A. From my understanding, yes.

12 Q. And that's because if a customer had to go to RDC's  
13 competitor for one order, they might go to that competitor for  
14 other orders, right?

15 A. Could be.

16 Q. Now, you didn't investigate how RDC's sales of controlled  
17 substances affected the sales of non-controlled substances,  
18 right?

19 A. I did not.

20 Q. Let's take a really simple example. Say one of RDC's  
21 customers bought lots of different products, including both  
22 controlled and non-controlled substances, okay?

23 A. Okay.

24 Q. And now imagine, just for the sake of the hypothetical,  
25 that RDC said to that customer, we're not going to sell you

M1RBDOU4

Martinovic - Cross

1 controlled substances anymore. All right?

2 A. Okay.

3 Q. Now, that would obviously affect RDC's sales of controlled  
4 substances, correct?

5 A. Yes.

6 Q. And it wouldn't be selling to that customer anymore, right?

7 A. Yes.

8 Q. That could also affect RDC's sales of non-controlled  
9 substances, right?

10 A. Maybe.

11 Q. That customer might take some of its business elsewhere,  
12 correct?

13 A. Possibility.

14 Q. Customer could take all of its business somewhere else,  
15 right?

16 A. Another possibility.

17 Q. And we can agree that you didn't analyze the relationship  
18 between the controlled and non-controlled sales?

19 A. No.

20 Q. So you didn't look at whether the growth in RDC's  
21 non-controlled substance sales was because of the growth in its  
22 controlled substance sales?

23 A. I did not.

24 Q. You didn't analyze whether RDC got new customers because it  
25 was more willing to sell those pharmacies controlled substances

M1RBDOU4

Martinovic - Cross

1 than other competitors, right?

2 A. Repeat the question.

3 Q. Sure. Did you analyze whether RDC got new customers because  
4 it was more willing to sell those pharmacies controlled  
5 substances than RDC's competitors were?

6 A. I did not analyze that, no.

7 Q. And you didn't analyze whether RDC would have lost  
8 customers if it had stricter controls over opioid sales,  
9 correct?

10 MR. JANEY: Objection, your Honor. The witness isn't  
11 in a position -- he's not competent to answer anything about  
12 controls.

13 THE COURT: He's competent to answer whether or not  
14 that was in his analysis. That was the question.

15 A. Sorry. Repeat the question.

16 Q. Sure. Sure. You didn't analyze whether RDC would have  
17 lost customers if it had stricter controls over opioid sales?

18 A. I did not.

19 Q. I want to turn to talking about Mr. Doud's bonuses, and  
20 particularly I want to talk about this cost issue that you  
21 discussed on direct examination. Okay. Let's go to Government  
22 Exhibit 270.

23 This is the employment agreement that you looked at  
24 during your direct examination, correct?

25 A. Yes.

M1RBDOU4

Martinovic - Cross

1 Q. Let's turn to the second to last page. This year is an  
2 example of one of RDC's consolidated statements of earnings,  
3 correct?

4 A. Yes .

5 Q. And this is important because Mr. Doud's bonus is based in  
6 part on the profit calculation that comes from this  
7 consolidated earning statement, right?

8 A. Yes.

9 Q. I want to walk through the detail here. The top line is  
10 net sales, that's just how much money RDC makes from selling  
11 stuff?

12 A. Yes.

13 Q. Now the next line is the cost of goods sold, correct?

14 A. Yes.

15 Q. Now, one part of the cost of goods sold is how much money  
16 RDC pays for the stuff that it sells, right?

17 A. Yes.

18 Q. But do you see there's actually other informations that  
19 written into this line here?

20 A. Yes.

21 Q. And specifically it says, net of purchase discounts and it  
22 lists out a little over \$19 million and \$17 million in 2013 and  
23 2012 respectively?

24 A. Yes.

25 Q. And then the line below says the gross profit of net sales,

M1RBDOU4

Martinovic - Cross

1 correct?

2 A. Yes.

3 Q. And that both has an amount and a percentage, right?

4 A. Yes.

5 Q. And the percentage is the percentage of gross profit  
6 relative to net sales, correct?

7 A. Yes.

8 Q. So I want to break this down into two pieces. First  
9 talking about costs.

10 Now, in the context of a pharmaceutical wholesaler  
11 like RDC, you agree that it's wrong or would be incorrect to  
12 look just at the cost of RDC's purchases from the manufacturer  
13 when assessing costs of goods sold?

14 A. Repeat the question.

15 Q. Sure. The cost component for a pharmaceutical distributor  
16 is not just the costs of what it pays to buy its products,  
17 right?

18 A. Correct.

19 Q. You need to consider other factors, like rebates and  
20 discounts in order to come to the correct profit number just  
21 like in this statement here, right?

22 A. Yes.

23 Q. Now, you testified on direct examination that you can't  
24 understand an accurate profit assessment unless you know costs,  
25 right?

M1RBDOU4

Martinovic - Cross

1 A. Yes.

2 Q. But that's not exactly true, is it?

3 A. Why do you say that?

4 Q. Well, sure. You have this 3.71 percent here for gross  
5 profits on net sales, right?

6 A. Okay.

7 Q. You could calculate gross profits on net sales by taking  
8 that 3.71 percent and multiplying flying it by the net sales,  
9 right?

10 A. Yes.

11 Q. So if you knew about profit margin on products, you can  
12 calculate the profit without having specific data on the costs,  
13 right?

14 A. You can do so with using this global gross profit number,  
15 yes.

16 Q. And if you had specific profit margin numbers for  
17 controlled substances, you could also do it with controlled  
18 substances, right?

19 A. If I had the information.

20 Q. And, in fact, you did that have that information, didn't  
21 you?

22 A. No.

23 Q. Well, I'm going to show you what's been marked as  
24 Government Exhibit 1237. This is not yet in evidence, so let's  
25 just have this for the witness and for the parties and the

M1RBDOU4

Martinovic - Cross

1 Court. I'm showing you a document. Do you recognize this  
2 document?

3 A. I do.

4 Q. It's says controlled substances 2012 to 2016, correct?

5 A. Yes.

6 Q. And did you review this when you were preparing to  
7 testified today?

8 A. Yes.

9 MR. BURNETT: Your Honor, the government offers  
10 Exhibit 1237.

11 THE COURT: Any objection?

12 MR. JANEY: No objection.

13 THE COURT: It will be admitted into evidence.

14 (Government's Exhibit 1237 received in evidence)

15 Q. This is a document prepared by RDC, correct?

16 A. It's a document that was attached to an email from counsel  
17 for RDC to U.S. Department of Justice.

18 Q. Sure. And it looks at controlled substance sales between  
19 2012 and 2016, correct?

20 A. Yes.

21 Q. Now, the first column or sorry column B, that's the  
22 revenue, right?

23 A. Yes.

24 Q. The next column, column C, that's the cost, right?

25 A. Yes.

M1RBDOU4

Martinovic - Cross

1 Q. And if you were to stop there right after cost, it would  
2 like look like RDC lost money on these sales, right?

3 A. In some instance, yes.

4 Q. Sorry. That was a bad question. Look at the row for  
5 totals, that's row 18?

6 A. Okay.

7 Q. If you stopped after costs, the costs would be higher than  
8 the revenue, right?

9 A. Yes, based on this view.

10 Q. But as we talked about before, there are other things after  
11 costs that you need to factor into when determining profits,  
12 right?

13 A. Yes.

14 Q. And there are a number of other factors, a number of other  
15 line items here after costs, like rebates and discounts,  
16 correct?

17 A. Yes.

18 Q. And let's scroll over a little bit. Do you see at the end  
19 of this column 18 there's a percentage?

20 A. Yes.

21 Q. And that's the gross profit percentage, right?

22 A. Yes.

23 Q. And that 4.73 percent on controlled substance sales  
24 between 2012 and 2016, right?

25 A. Yes.



M1RBDOU4

Martinovic - Cross

1 Q. So let's go back to Government Exhibit 270. Let's go back  
2 to that second to last page again.

3 So the gross profit margin we just looked at for  
4 controlled substances was 4.7 percent, right?

5 A. Can you go back to the other document or exhibit?

6 Q. Sure.

7 A. Yes, I can see the 4.73 percent.

8 Q. Let's go back to Government Exhibit 270 again. Let's  
9 highlight the gross profit on overall net sales here.

10 Now, the gross profit margin on overall sales was 3.71  
11 percent, right?

12 A. Yes, except this is looking at 3.7 percent for only fiscal  
13 year ending 2013 versus the other exhibit which looked at sales  
14 for Linden Care 2012 through '16.

15 Q. Sure. And you had data on the gross profit percentage for  
16 every one of those fiscal years, didn't you?

17 A. Only based on the statement of earnings and the financial  
18 statements.

19 Q. But did you compare those percentages in the statements of  
20 earnings for the financial statements with that 4.71 percent  
21 number in any of the years?

22 A. I did.

23 Q. And what did you find?

24 A. That's just for one customer's controlled substance sales.  
25 No one else's.

M1RBDOU4

Martinovic - Cross

1 Q. Let's go back to that exhibit actually.

2 A. Two customers actually.

3 Q. You see that this says totals in row three?

4 A. Yes.

5 Q. And that's \$1.1 billion?

6 A. Yes.

7 Q. Your testimony is that's only for two customers?

8 A. Yes.

9 Q. But you did the analysis of the total controlled substance  
10 sales overall from RDC, you looked at that revenue number,  
11 right?

12 A. On a revenue basis, yes.

13 Q. Row B here shows revenue, doesn't it?

14 A. It shows the revenue for Bell Health a/k/a Linden Care and  
15 Dunn Meadow.

16 Q. You're reading from row 23, correct?

17 A. Correct.

18 Q. You're not reading from row 3, the top line?

19 A. Yes.

20 Q. The top line revenue number reported here is \$1.1 billion,  
21 right?

22 A. Yes.

23 Q. Let's go back to R1. Let's take a look at the annual  
24 controlled substance sales. You had this between 2011 and  
25 2017, correct?

M1RBD0U4

Martinovic - Cross

1 A. Yes.

2 Q. And between 2011 and 2017, the total of controlled  
3 substance revenue that you calculated was \$1.2 billion?

4 A. Yes.

5 Q. And the chart on that sale was \$1.1 billion for a little  
6 bit of a shorter time period?

7 A. Yes.

8 Q. Fair to say that's reflecting all of the controlled  
9 substance sales?

10 A. No.

11 Q. Your testimony now is that all of RDC's controlled  
12 substance sales was to two customers?

13 A. A good chunk of it, yes.

14 Q. You've done that analysis, and you can say honestly today  
15 that every single dollar of RDC's controlled substance sales  
16 was to two customers only?

17 A. I can't say all of it, no.

18 Q. Let's go ahead and turn to the analysis of Mr. Doud's  
19 bonuses, and let's scroll down. Let's stay in R1 and scroll  
20 down one more slide.

21 This is the part of the presentation you put together  
22 called annual bonus amounts, correct?

23 A. Yes.

24 Q. Now, it's fair to say that when you did this calculation,  
25 you didn't an analysis that linked a portion of Mr. Doud's

M1RBDOU4

Martinovic - Cross

1 bonus to controlled substance sales and non-controlled  
2 substance sales, right?

3 A. Yes.

4 Q. And you did that using the same percentages from your  
5 analysis earlier?

6 A. Yes.

7 Q. So let's zoom in on the controlled substance section which  
8 is in the middle of the bonus amount subheading.

9 Now, under the analysis you performed, is it fair to  
10 say that greater share of Mr. Doud's bonus was attributable to  
11 controlled substance sales after 2012 than before 2012?

12 A. Repeat the question.

13 Q. Sure. Is it fair to say that a greater share of Mr. Doud's  
14 bonuses were attributed to controlled substance sales after  
15 2012 than before 2012?

16 A. No, a greater portion of Mr. Doud's bonuses attributed to  
17 non-controlled sales.

18 Q. I'm comparing years. Let's just do the math, right.

19 In 2012 and 2011, you attributed 9.3 and 9.8 percent  
20 of Mr. Doud's bonus to controlled substance sales, right?

21 A. Yes.

22 Q. That rose to about 12 percent the next year?

23 A. Yes.

24 Q. Sixteen percent the year after that?

25 A. Yes.

M1RBDOU4

Martinovic - Cross

1 Q. And around 13 1/2 percent in the two years following that  
2 before it dropped a little bit again?

3 A. Yes.

4 Q. Now, the next line down, that's the total, 12.9 percent,  
5 correct?

6 A. Yes.

7 Q. And that's the percentage of Mr. Doud's bonus across all  
8 those years that according to your calculation was directly  
9 attributable to the sales of controlled substances, right?

10 A. Yes.

11 Q. It's fair to say that 13 percent of a paycheck is a  
12 meaningful portion?

13 A. Yes.

14 Q. And you wouldn't mind a 13 percent raise, right?

15 MR. JANEY: Objection.

16 THE COURT: Sustained.

17 Q. I want to switch from talking about percentages to the  
18 actual money that went into Mr. Doud's pocket, and that's the  
19 row just to the left of the row we were looking at, right?

20 A. Yes.

21 Q. So that number starts at about say \$35, 000 in 2012,  
22 correct?

23 A. Yes.

24 Q. Rises to 52, 000 the next year, right? Then 95, 000 the  
25 year after that, right?

M1RBDOU4

Martinovic - Cross

1 A. Yes.

2 Q. 149, 000 and 141, 000 in the next two years, correct?

3 A. Yes.

4 Q. And it falls a bit to 90, 000, right?

5 A. Yes.

6 Q. And you're aware that Professor Cutler testified about this  
7 topic yesterday, right?

8 A. Yes.

9 Q. In his analysis of the percentages of controlled substances  
10 directly attributable to percentages of Mr. Doud's bonus  
11 directly attributable to controlled substances is pretty  
12 similar to your analysis here, right?

13 A. Yes.

14 Q. Now, all tolled, Mr. Doud made about \$592, 000 directly  
15 attributed to controlled substances over the course of the  
16 years you analyzed, right?

17 A. Yes.

18 Q. And we can agree that almost \$600, 000 is a lot of money,  
19 right?

20 A. Yes.

21 Q. Now, in fact, why don't we use as a reference point  
22 Mr. Doud's total bonus in 2011. His total bonus in 2011 was  
23 \$284, 000, correct?

24 A. Yes.

25 Q. And by 2015 and 2016 about a \$140, 000 in bonuses was going

M1RBDOU4

Martinovic - Cross

1 to him based on controlled substance sales alone?

2 A. Yes.

3 Q. And again, Mr. Martinovic, when you did this analysis, you  
4 treated non-controlled substances and controlled substances as  
5 separate categories, right?

6 A. Yes.

7 Q. Just like you did in the sales analysis, yes?

8 A. Yes.

9 Q. So like in your sales analysis, you didn't look at the  
10 relationship between sales for controlled and non-controlled  
11 substances, correct?

12 A. Correct.

13 Q. So the part of the defendant's bonus here that you've  
14 attributed to non-controlled substance sales, you didn't  
15 analysis whether those sales were driven by RDC sales of  
16 controlled substances?

17 A. I did not.

18 Q. And you didn't analysis whether the part of the defendant's  
19 bonus that you calculated for non-controlled substances would  
20 have been lower if RDC had cut off more customers from buying  
21 opioids earlier?

22 A. I did not.

23 Q. And you didn't analyze whether that part of the defendant's  
24 bonus would have been lower if RDC had refused to ship more  
25 suspicious opioid orders, correct?

M1RBDOU4

Martinovic - Redirect

1 A. I did not analyze.

2 MR. BURNETT: No further questions, your Honor.

3 THE COURT: Any further questions, Mr. Janey.

4 MR. JANEY: Yes, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. JANEY:

7 Q. Mr. Martinovic, on cross examination you were asked fairly  
8 extensively about Government 1237. Do you recall that?

9 A. I have to see the exhibit.

10 Q. Can we see Government Exhibit 1237.

11 Do you recall being asked about this exhibit on cross  
12 examination, particularly in the context of questions about  
13 whether you had cost data?

14 A. Yes.

15 Q. Did you rely on this information for your analysis for cost  
16 data?

17 A. This specific exhibit?

18 Q. Yes. Did you rely on this?

19 A. No.

20 Q. Why not?

21 A. Because it only shows a part of the picture, not everything  
22 on a global basis, controlled, not controlled, all customers,  
23 all sales.

24 Q. Do you believe that it would have been appropriate for you  
25 to use this sheet in your analysis?



M1RBDOU4

Martinovic - Redirect

1 A. Not by itself.

2 Q. We can take this down. You were asked on cross examination  
3 whether the alternative method where you don't have cost data  
4 of using gross profit margin was an appropriate method. Do you  
5 recall that?

6 A. Yes.

7 Q. And is that one method to be used?

8 A. I mean, you want to use the method closest to the way the  
9 methodology is.

10 Q. Well, can you expand on that?

11 A. Well, in the absence of having robust complete global cost  
12 information, profitability information, outside of financial  
13 statements. I mean, to engage in doing the analysis  
14 thoroughly, to be able to do it with a view to all segregated  
15 -- all controlled substances versus non-controlled substances,  
16 then you can only use the financial statements as a guide.

17 You can use it on a total basis, but you can't slice  
18 it and dice it.

19 Q. To obtain accurate information, would you need that  
20 discrete cost data?

21 A. Yes.

22 Q. Was that information available to you?

23 A. No.

24 Q. Was that information available to Professor Cutler that you  
25 observed in your view of the material he used?

M1RBDOU4

Martinovic - Redirect

1 A. I don't know.

2 Q. Can we take a look at R2. On cross examination, you were  
3 asked fairly extensively about this chart. Do you recall that?

4 A. Yes.

5 Q. As you look at the data on this chart, are non-controlled  
6 sales the larger number as compared to controlled sales each  
7 year for the period of 2011 to 2017?

8 A. Yes.

9 Q. By what magnitude?

10 A. Well, roughly if we see on the bottom, take total, I mean  
11 87 percent of all sales is non-controlled, and the corollary or  
12 the flip side of that is 12.95 percent controlled.

13 Q. We can take this down. At the beginning of your cross  
14 examination you were asked whether you considered certain data  
15 that Dr. Cutler or Professor Cutler included in his  
16 presentation. Do you recall that?

17 A. Yes.

18 Q. And counsel asked you whether you were okay with those  
19 slides, meaning the slides that you ironically, in fact, did  
20 not review. Do you recall that?

21 MR. BURNETT: Objection, I think it misstates the  
22 question.

23 THE COURT: What's your question, Mr. Janey? Restate  
24 the question.

25 Q. Let me state it in a different way. Is there a reason why

M1RBDOU4

Martinovic - Redirect

1 you didn't review all of Mr. Cutler's slides?

2 A. There is if it didn't apply to my scope of engagement.

3 Q. And your scope of engagement didn't include orders of  
4 interest?

5 A. It did not.

6 Q. And it didn't include red flags?

7 A. It did not.

8 Q. Is it fair to say that it's natural that you would not  
9 review something that is in your area and scope of assignment?

10 A. It makes sense.

11 MR. JANEY: No further questions, your Honor.

12 THE COURT: Any further questions?

13 MR. BURNETT: All set.

14 THE COURT: Thank you, sir.

15 You can step down

16 (Witness excused)

17 (Continued on next page)

M1RBDOU4

1 THE COURT: Anything further on behalf of the defense  
2 at this time?

3 MR. GOTTLIEB: Your Honor, may we have one moment,  
4 please.

5 THE COURT: Yes.

6 MR. GOTTLIEB: Your Honor, thank you very much. There  
7 is nothing additional, your Honor. Thank you.

8 THE COURT: Anything further on behalf of the  
9 government at this time?

10 MS. ROTHMAN: Yes, your Honor. The government calls  
11 Christopher Fiore.

12 MR. GOTTLIEB: Your Honor, so the record is correct,  
13 we had a previous conference and without repeating it on the  
14 record, the motions that would be typically raised, we renew  
15 now.

16 THE COURT: Sure. Ms. Rothman, is this a short  
17 witness or should we take a break?

18 MS. ROTHMAN: Why don't we take a quick break.

19 THE COURT: All right.

20 Ladies and gentlemen, we will take a 10 minute break.  
21 Don't discuss the case. Keep an open mind. I'll let you  
22 stretch and use the restroom if you want, and hopefully on  
23 schedule we'll finish these witnesses within the hour.

24 (In open court; jury not present)

25 (Continued on next page)

M1RBDOU4

1 THE COURT: Let's take a ten minute break.

2 MR. ROOS: Judge, one very minor thing.

3 THE COURT: Yes.

4 MR. ROOS: I can't recall completely. Everything on  
5 the jury charge you just want us to put into a letter? I just  
6 want to know if I should be prepared to address it later today.

7 THE COURT: If there's things that you notice right  
8 now that you want to direct my attention to, we'll discuss it  
9 briefly after we are finish with the witnesses.

10 Otherwise, when you get a full opportunity to review  
11 it, send me a letter, hopefully by tomorrow afternoon about  
12 what you suggest so I can review it in the courtroom.

13 (Recess)

14 (Continued on next page)

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(In open court; jury not present)

THE COURT: Are we ready to proceed? Did you have something you wanted to raise now while we wait with regard to the jury charge?

MR. ROOS: Sure. We haven't reviewed all the specific language, just looking at the headings.

THE COURT: I don't read headings. I don't read the headings.

MR. ROOS: The categories. One is I didn't see an instruction on quantity.

THE COURT: It's not in there. I'm trying to decide whether or not I am going to explain that to them when I explain the verdict sheet. I do have the quantity instruction right here.

MR. ROOS: Got it.

THE COURT: So if both sides agree they want it in, as opposed to my explanation of it.

MR. ROOS: Okay.

THE COURT: We'll talk about that.

MR. ROOS: The second was some sort of other individuals not on trial or uncalled witnesses equally available type general instruction.

THE COURT: I took that out, because it doesn't seem to be, both sides called witnesses, and unless somebody's going to argue that a particular witness wasn't called by the other

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1 side, I didn't think that was an issue.

2 MR. ROOS: That's not our plan. And if it happened,  
3 your Honor could always give it. But I don't know if  
4 Mr. Gottlieb has a view on it.

5 THE COURT: They can think about it. They don't have  
6 to address it now. I don't feel strongly one way or the other.  
7 I had it in my first draft.

8 MR. ROOS: We're not going to fight over the language.  
9 It is standard.

10 And the final one is just I think there were two  
11 documents with redactions.

12 THE COURT: Two documents with redactions?

13 MR. ROOS: Yes.

14 THE COURT: I don't remember the redactions. I saw  
15 that charge and I took that out. And it's probably my error  
16 for not noticing the redactions. Since I didn't remember  
17 redactions, I didn't think it was necessary to sort of say that  
18 to the jury, like there is something out there they didn't see.

19 MR. ROOS: We agree. We don't think it was  
20 particularly material.

21 MR. TOWNSEND: With regard to the redactions, we put  
22 in the redacted, but then the e-mail previous to that which had  
23 the redacted portions unredacted. So that there is a  
24 complete --

25 THE COURT: I don't think there is any redaction that

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1 the jury didn't see. Is that correct?

2 MR. TOWNSEND: As far as the defense knows, yes.

3 THE COURT: I don't have a strong feeling one way or  
4 another about those issues. We can address that, depending on  
5 what you think is appropriate.

6 MR. ROOS: That was it. Otherwise we are going to  
7 look at your Honor's language. But other than the quantity and  
8 uncalled witnesses, I don't think there were any categories  
9 that weren't in there.

10 THE COURT: If you have in particular something you  
11 want me to spend some time thinking about, try to get it to me  
12 by tomorrow afternoon so I can have it before the weekend. I  
13 don't have to go around and try to pull it from the documents.

14 MR. GOTTLIEB: We will.

15 THE COURT: And then, if you get a response, send me a  
16 response over weekend. I'll make sure I get it. But the  
17 logistics getting to my staff to see whether there is something  
18 up there and pulling it down and sending it over to me, just  
19 try to get it to me as soon as possible.

20 I'd like to meet at 9:15 on Monday. I'll tell the  
21 jury still come in at 9:45. We can talk, have a further  
22 charging conference on Monday, and then be prepared to go  
23 forward right away with the summations.

24 Yes, did you have something, Ms. Rothman?

25 MS. ROTHMAN: To pass these to your clerk for the



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1 witness.

2 THE COURT: How long is this witness?

3 MS. ROTHMAN: 20 minutes, if that.

4 THE COURT: This witness is rebutting what?

5 MS. ROTHMAN: He is he rebutting Defense Exhibit A82,  
6 the Excel chart that the defense put in their case. That's the  
7 chart that shows the 2013 to 2016 terminations.

8 THE COURT: The one we were going back and forth  
9 about?

10 MS. ROTHMAN: We're going to respond to that with some  
11 charts.

12 THE COURT: All right. Does the defense have any  
13 objections to their exhibits that I can address now, rather  
14 than having to bring the jury down and then send them back up?

15 MR. GOTTLIEB: We haven't seen the exhibits that they  
16 intend on using now. Unless, of course, they are exhibits that  
17 have already been received in evidence.

18 MS. ROTHMAN: Last night we produced to you Government  
19 Exhibit 913. Those are the charts. And I have one more to  
20 give you now.

21 MR. GOTTLIEB: Your Honor, can I have a moment to see  
22 what I am being handed?

23 THE COURT: Sure. Where is your witness?

24 MS. ROTHMAN: He's waiting in the witness room. He  
25 was here, he walked in and then left.

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1 THE COURT: Bring him in. The jury is outside.

2 MR. GOTTLIEB: Can I ask is 913, are these -- I was  
3 just handed a number of pages stapled together of Government  
4 Exhibit 913. Are these charts already in evidence?

5 MS. ROTHMAN: The data is. These are charts that were  
6 prepared from the data --

7 THE COURT: Are the exhibit numbers already in  
8 evidence?

9 MS. ROTHMAN: 913 is not in evidence. The underlying  
10 data is in evidence.

11 THE COURT: What about, how many exhibits do you have  
12 there?

13 MS. ROTHMAN: Two exhibits.

14 THE COURT: Neither one of those exhibits had  
15 previously been admitted into evidence.

16 MS. ROTHMAN: Not the exhibits, your Honor. They are  
17 rebuttal witness, rebuttal exhibits.

18 MR. GOTTLIEB: If I can show you what I was just  
19 handed, Government Exhibit 913, so you can appreciate why I am  
20 going to ask -- I will be asking for a break after direct so I  
21 can review the documents.

22 THE COURT: All of these pages are one exhibit?

23 MS. ROTHMAN: Yes, your Honor. I can explain. It may  
24 help speed this along. So, the defense put in an Excel  
25 spreadsheet that reflects several pharmacies where there was a

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1 notation that they were terminated or suspended between 2013 or  
2 2016. All we did is look at the sales data for those 37  
3 pharmacies, that sale data is already in evidence, it's in  
4 evidence. And we had charts prepared that show the sales data  
5 for those 37 pharmacies, and you'll see, your Honor, that sales  
6 continue past the date of the purported suspension or  
7 termination.

8 THE COURT: How much testimony goes along with that?

9 MS. ROTHMAN: 15 minutes, if that, your Honor. The  
10 witness will explain what he did.

11 THE COURT: I have a 37-page exhibit.

12 MS. ROTHMAN: He's not going to go through every  
13 chart. It's in evidence. He is going to talk how it was made  
14 and point to a few charts. It will be quick, your Honor.

15 MR. GOTTLIEB: Your Honor, just so the record really  
16 is clear. We received word last night, which we appreciated,  
17 that there was going to be a rebuttal witness to testify that  
18 subsequent to the A82 that indicated that from 2013 to 2016,  
19 certain pharmacies were suspended or terminated, that  
20 subsequent to that, the records will, or the records indicate  
21 that they, that they purchased again. We discussed that this  
22 morning. We understood, that's very straightforward. We were  
23 not aware that they were going to create our chart, the 37  
24 pages that you are looking at for the first time as I am.  
25 Because while the government makes light of, well, doesn't

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1 matter, I am only going to ask a few questions. If that  
2 document is going to go in evidence, I am duty bound to make  
3 sure that document is accurate. And I always start off  
4 assuming that something the government gives me is accurate.  
5 But there is no way as a defense attorney I can possibly make  
6 any reasoned objection unless I have the opportunity to look at  
7 it to see what's in it. And if need be, to look at the source  
8 information that I already have. That's a new document. It's  
9 never been provided.

10 THE COURT: What do you want from me?

11 MR. GOTTLIEB: I'll just need time to review it.

12 THE COURT: Tell me what you want.

13 MR. GOTTLIEB: After direct, I hope within -- if you  
14 give me 30 minutes, I hope that will be enough.

15 THE COURT: Okay. I mean, you know, as they say,  
16 remember, I don't give you 30 minutes of my time, I give you 30  
17 minutes of the jury's time.

18 You have another exhibit other than this one?

19 MS. ROTHMAN: Yes. Your Honor. It is a one-page  
20 document.

21 THE COURT: Can I see it now so I don't have to guess  
22 about it?

23 MS. ROTHMAN: You can, your Honor. It is a one page  
24 document that is a PDF of Defense Exhibit A82, which is in  
25 evidence, which is the pharmacies that are listed as being

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1 terminated or suspended between 2013 and 2016. The only  
2 difference is the witness has highlighted the pharmacies where  
3 sales continued after the date listed in Defense Exhibit A82.  
4 That is it.

5 THE COURT: This document is the exact same as the  
6 document that's in evidence except for the highlighting?

7 MS. ROTHMAN: It is a PDF not Excel, but yes, content  
8 is identical, your Honor.

9 THE COURT: That's what he's going to testify the  
10 highlighting means?

11 MS. ROTHMAN: Exactly, yes, your Honor.

12 MR. GOTTLIEB: Your Honor, just so your Honor can  
13 understand our position. We have no objection to that document  
14 1232A. We do object to a whole series of bar graphs that when  
15 the source, especially, your Honor, if all of that information  
16 is already in evidence, that was now put in bar graphs. It  
17 seems unnecessary. The witness who they're calling could very  
18 well say that I have reviewed the highlighted pharmacies and I  
19 looked at the other materials, and I was able to ascertain that  
20 there was subsequent purchases. Frankly, that's what was  
21 represented to us it was going to be.

22 THE COURT: Well, I haven't made this an issue, both  
23 sides have made this an issue. So I don't know where, I mean,  
24 I won't say, as I usually say, much ado about nothing, because  
25 you may think it is really the critical part of your cases.

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1 But, I don't think this is where the jury's head is going to  
2 be.

3 But, I will give you whatever time you need before  
4 cross-examination. What I will do is, once they rest, if you  
5 think you don't need the time and you're ready to go forward,  
6 you can go forward. If you think you need some time, then  
7 we'll take a break and, hopefully, we'll plan like a 20 minute  
8 break. I hope that will be enough. Once you've heard the  
9 testimony and you have reviewed the document. My guess is the  
10 document -- compared to your documents is probably fairly easy  
11 for you to determine whether or not these documents reflect  
12 what they say they reflect.

13 So let's bring in the jury and let's get this done. I  
14 want to send them home at a reasonable hour.

15 (Continued on next page)

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Mlr3dou5

Fiore - Direct

1 (Jury present)

2 THE COURT: Ms. Rothman, will you identify the witness  
3 for the jury.

4 MS. ROTHMAN: Yes, your Honor. Christopher Fiore.

5 CHRISTOPHER FIORE,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. ROTHMAN:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Where do you work?

13 A. I work at Compass Lexecon.

14 Q. What is Compass Lexecon?

15 A. Compass Lexecon is an economic consulting firm.

16 Q. What do you do there?

17 A. I do data analytics for litigation.

18 Q. Can you tell us a bit about your educational background.

19 A. Sure. So I did my undergraduate degree at the University  
20 of Rochester. And then I went to graduate school at Yale  
21 University to do a PhD in economics, and finished there in  
22 2012.

23 Q. Do you happen to now how far Rochester is from New York  
24 City?

25 A. Approximately 350 miles.

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Fiore - Direct

1 Q. Thank you.

2 MS. ROTHMAN: Ms. Drescher, can you please pull up for  
3 the witness what's in evidence as Defense Exhibit A82.

4 Q. Mr. Fiore, do you recognize this document?

5 A. I do.

6 MS. ROTHMAN: Ms. Drescher, can you please filter for  
7 the dates that are in 2013 to 2016.

8 Q. Looking at the pharmacies that appear to have a suspension  
9 or termination date between 2013 and 2016, were you asked to do  
10 anything in connection with those pharmacies?

11 A. I was asked to calculate the monthly sales over time of  
12 these pharmacies, and determine whether there were any sales of  
13 controlled substances by RDC to these companies after the date  
14 of suspension or termination.

15 Q. Other than that task, which we'll get to in a moment, have  
16 you had any other involvement in this case?

17 A. Not at all.

18 Q. Do you know anything about the pharmacies that are listed  
19 on this chart?

20 A. No, nothing.

21 Q. Do you know anything about Rochester Drug Co-Operative?

22 A. Nothing.

23 MS. ROTHMAN: I'm trying to move cross-examination  
24 along, your Honor.

25 Q. Do you know anything about the reason for termination or



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Fiore - Direct

1 suspensions listed here?

2 A. No.

3 Q. Anything about the due diligence policies of these  
4 pharmacies?

5 A. No.

6 MS. ROTHMAN: Can we pull up for the witness what's  
7 been marked for identification as Government Exhibit 913. We  
8 can flip through for the witness.

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. What is it?

12 A. It's the plot of monthly sales that my colleagues and I  
13 created.

14 Q. Do these charts summarize a voluminous amount of  
15 information?

16 A. Yes.

17 MS. ROTHMAN: The government offers into evidence  
18 Government Exhibit 913.

19 MR. GOTTLIEB: Your Honor, as we indicated, until such  
20 time as we can review, objection at this point.

21 THE COURT: I'm going to admit it subject to further  
22 objection. If you have further objection for  
23 cross-examination, then I'll hear you.

24 (Government's Exhibit 913 received in evidence)

25 MS. ROTHMAN: May we publish to the jury?

Mlr3dou5

Fiore - Direct

1 THE COURT: Thank you.

2 Q. All right, Mr. Fiore, let's get our bearings on what we're  
3 looking at here.

4 What pharmacy does this chart relate to?

5 A. This relates to Sheely's Drugstore in Scranton,  
6 Pennsylvania.

7 Q. The X axis at the bottom of the chart, what information do  
8 you see there?

9 A. That refers to the month in which the sales occurred.

10 Q. And then the Y axis going from bottom to top, what  
11 information is contained there?

12 A. That's the dollar amount of controlled substance sales.

13 Q. Do you see that black line kind of towards the right of the  
14 slide?

15 A. Yes.

16 Q. What does that black line reflect?

17 A. That is the date of suspension or termination.

18 Q. That's as reflected on Defense Exhibit A82?

19 A. Correct.

20 Q. Then looking at the top of the slide, there is some  
21 information about sales. Can you just read the sales  
22 information at the top.

23 A. Total oxycodone sales was approximately 1.6 million. And  
24 total non-oxycodone controlled sales were approximately 6.3  
25 million.

Mlr3dou5

Fiore - Direct

1 Q. Looking at the bar chart, there are some columns in blue  
2 and some that are red. What do the different colors mean?

3 A. The columns in blue signify sales that occurred prior to  
4 the date of suspension or termination. And the bars in red  
5 refer to the sales that occurred after the date of suspension  
6 or termination.

7 Q. So with respect to Sheely's Drugstore, did sales of  
8 controlled substances continue after the date of suspension or  
9 termination as reflected on Defense Exhibit A82?

10 A. Yes.

11 Q. Let's look at the second slide, and we're not going to go  
12 through every one, Mr. Fiore, but we'll talk about a few.

13 What pharmacy does this relate to?

14 A. This is Amato Pharmacy in the Bronx.

15 Q. And just looking at the chart, did sales of controlled  
16 substances continue past the date of termination or suspension  
17 in this pharmacy?

18 A. Yes.

19 Q. Let's goes to slide three. What pharmacy is this?

20 A. This is Total Care Pharmacy in the Bronx.

21 Q. We can zoom out. And did sales of controlled substances  
22 continue past the date of suspension or termination for Total  
23 Care Pharmacy?

24 A. Yes.

25 Q. We can go to slide four. Let's go to slide five. Same

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Fiore - Direct

1 question. Did sales of controlled substances continue past the  
2 date of listed suspension or termination for Specialty Care  
3 Pharmacy?

4 A. Yes.

5 Q. Let's go to slide six. What pharmacy is this?

6 A. This is The Chemist Shop in New York, New York.

7 Q. What's the total oxycodone sales to the Chemist Shop?

8 A. Approximately 1.4 million.

9 Q. And the total non-oxycodone controlled substances sales?

10 A. Approximately 10 and a half million.

11 Q. Did sales of controlled substances continue to The Chemist  
12 Shop after the date of listed suspension or termination?

13 A. No.

14 Q. Let's go to the next slide. Let's go to slide eight for  
15 ProHealth. If we can zoom in on the top.

16 What is the total amount of oxycodone sales to  
17 ProHealth?

18 A. Approximately 1.8 million.

19 Q. And the non-oxycodone controlled sales?

20 A. Approximately 4.3 million.

21 Q. What's the date of the suspension or termination as listed  
22 on Defense Exhibit A82?

23 A. December 28 of 2015.

24 Q. Did sales continue, sales of controlled substances continue  
25 to ProHealth pharmacy after that listed date?

Mlr3dou5

Fiore - Direct

1 A. Yes.

2 Q. Let's keep flipping through the slides. I won't ask you  
3 questions about them until we get to some of the later slides.

4 Let's pause here on Kingsway. I want to ask you one  
5 question. In the earlier slides, the number at the top on the  
6 Y axis went to 300,000. Did you see that?

7 A. Yes.

8 Q. What's the number for these slides?

9 A. 50,000.

10 Q. So do these pharmacy customers have smaller sales than the  
11 ones at the beginning of the packet?

12 A. Yes.

13 Q. Okay. Just because we are on Kingsway, did sales of  
14 controlled substances continue to Kingsway Pharmacy after the  
15 listed date of suspension or termination?

16 A. Yes.

17 Q. We can keep flipping through.

18 Let's look at this one. Medical Center Pharmacy.  
19 What's the listed date of suspension or termination on Defense  
20 Exhibit A82?

21 A. April 25 of 2013.

22 Q. Did sales of controlled substances continue to Medical  
23 Center Pharmacy after that date?

24 A. Yes.

25 Q. We can keep going.

Mlr3dou5

Fiore - Direct

1 MS. ROTHMAN: We can take that down. If we can pull  
2 up for the witness what's been marked for identification as  
3 Government Exhibit 1232A.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. It's the list of suspensions or terminations according to  
8 Exhibit A82 that occurred prior to 2016. And in this document,  
9 the occurrences in which sales continued after the date of  
10 suspension or termination are highlighted.

11 MS. ROTHMAN: The government offers into evidence  
12 Government Exhibit 1232A.

13 MR. GOTTLIEB: No objection, your Honor.

14 THE COURT: This document will be admitted in  
15 evidence.

16 (Government's Exhibit 1232A received in evidence)

17 MS. ROTHMAN: May we publish to the jury?

18 THE COURT: Yes.

19 MS. ROTHMAN: Thank you.

20 Q. If we can zoom in a little bit, I know the text is kind of  
21 small just to get our bearings.

22 So, just a few questions on this chart. So what does  
23 the highlighting reflect?

24 A. The highlighting reflects the fact that sales of controlled  
25 substances occurred after the date of suspension or

Mlr3dou5

Fiore - Direct

1 termination.

2 Q. Looking at the action that's listed as red flag suspension.  
3 Is that the case for every red flag suspension, sales of  
4 controlled substances continued to that pharmacy after the  
5 listed date?

6 A. Yes, it is.

7 Q. With respect to termination of controlled substances  
8 ordering privileges, are there instances in which controlled  
9 substances were sold to these pharmacies even after that listed  
10 termination date?

11 A. Yes.

12 Q. How many occasions?

13 A. There were two.

14 MS. ROTHMAN: Your Honor, may I have one moment?

15 THE COURT: Yes.

16 Q. I want to be clear. The dates of these listed terminations  
17 and suspensions, that's in 2013, 2014, 2015, and 2016; is that  
18 correct?

19 A. Correct.

20 MS. ROTHMAN: No further questions, your Honor.

21 THE COURT: Mr. Gottlieb, did you need a few minutes  
22 or are you ready to proceed?

23 MR. GOTTLIEB: Your Honor, why don't I start and then  
24 we'll take a break.

25 MS. ROTHMAN: I actually, I think it should, we should

Mlr3dou5

Fiore - Cross

1 maybe do it in one shot.

2 MR. GOTTLIEB: No, I have to start.

3 THE COURT: Mr. Gottlieb, you can do it any way you  
4 want to do it.

5 MR. GOTTLIEB: Thank you.

6 CROSS-EXAMINATION

7 BY MR. GOTTLIEB:

8 Q. Sir, when did you learn that you were going to be traveling  
9 all those miles to come down and testify today?

10 MS. ROTHMAN: Objection. The witness lives in New  
11 Jersey.

12 Q. Oh I thought, the question -- I'm sorry. How many miles  
13 did, between where --

14 THE COURT: That's what's happens when it gets late in  
15 the day.

16 Q. All right. Sir, can we have Government Exhibit 278 placed  
17 on the board, please. This is in evidence. Government Exhibit  
18 278. And can we just scroll down, it begins with the first  
19 entry on this document is January 27, 2017, and we see on the  
20 bottom it says 4/25/13 to 2/10/20 suspension and termination.

21 This document, the government exhibit, starts on  
22 January 27, 2017. Correct?

23 MS. ROTHMAN: I don't think the witness has ever seen  
24 this document.

25 MR. GOTTLIEB: Your Honor, I'm wondering if we can



Mlr3dou5

Fiore - Cross

1 have the witness testify instead of counsel.

2 THE COURT: What's your question, Mr. Gottlieb?

3 Q. This document starts January 27, 2017, correct?

4 A. I can't see the rest of the rows, but...

5 Q. Scrolling down. And the last row is 2/10/2020, correct?

6 A. Yes.

7 Q. So the first row on the government's exhibit was in 2017,  
8 and now we see the end in 2/10/2020, correct?

9 A. It appears so, yes.

10 Q. Thank you. And can we now have Defense Exhibit 82. A82.  
11 And this is in evidence. May we have this -- there we go.

12 Now, sir, this document you saw, correct?

13 A. Yes.

14 Q. The first document that began in 2017, the government  
15 didn't show you, correct?

16 MS. ROTHMAN: Objection, your Honor.

17 THE COURT: Overruled. He can answer.

18 A. Correct.

19 Q. Now, this document, is it fair to say the first entry is  
20 April 25, 2013, correct?

21 A. Correct.

22 Q. And this document we see on the bottom says, as the  
23 previous document said, 4/25/13 to February 10, 2020,  
24 suspension and termination, correct?

25 A. Yes.

Mlr3dou5

Fiore - Cross

1 Q. Now, if we can scroll down in the document that the defense  
2 introduced, it started in 2013, and it continues -- let's stop  
3 right there. Go up a little bit. It goes down and it covers  
4 2012 -- 2013, 2013, 2014, 2015, 2016, and then stop right  
5 there.

6 It stops in the middle here at account number 6282,  
7 Wyckoff Pharmacy, there you begin to see for the first time  
8 January 27, 2017. Correct?

9 You see that Wyckoff Pharmacy, the third one?

10 A. I do see it, yes.

11 Q. And that is the starting date January 27, 2017, that's the  
12 starting date that was in the government's exhibit, correct?

13 A. The previous document you showed me?

14 Q. Yes.

15 A. Starting -- yes. It matches the starting date.

16 Q. So, the government contacted you and asked you to review  
17 the defense exhibit, correct?

18 A. Yes.

19 Q. Is it fair to say that, but for the defense exhibit  
20 containing the 2013, 2014, '15, and '16 entries, everything  
21 else on this exhibit, everything else other than those dates is  
22 what appeared on the government's exhibit, correct?

23 A. Can you restate the question?

24 Q. Sure. Looking at A82, Defense A82, that contains  
25 everything and more than appeared on the government's exhibit

Mlr3dou5

Fiore - Cross

1 that was showed to you a moment before, correct?

2 MS. ROTHMAN: Objection to form.

3 THE COURT: Overruled. You can answer.

4 A. I'm not sure I compared it line by line, so I can't say  
5 it's exact.

6 Q. All right. Fair enough. They're both in evidence now.  
7 Thank you.

8 Before we take just a brief break, you were good  
9 enough to identify Government Exhibit 1232A. Can we put that  
10 on the board, please.

11 So now, this is an exhibit that was created by the  
12 government, correct, to your knowledge, if you know?

13 A. Using the information that my colleagues and I -- using our  
14 analysis, yes.

15 Q. Now, this one reflects a portion of the Defense Exhibit A82  
16 that I showed you before. Do you recognize that?

17 A. Yes.

18 Q. What you did, let me see if I understand. What you did is  
19 you looked at the defense exhibit now that was received in  
20 evidence covering 2013 to 2020, and you went through each of  
21 the pharmacies that were listed to see if after the action that  
22 was shown on this exhibit was taken, whether or not  
23 subsequently there were new sales, correct?

24 A. For the suspensions and terminations that occurred in 2016  
25 and prior, yes.

Mlr3dou5

Fiore - Cross

1 Q. And what you did is you highlighted all those in which  
2 there was some indication that there were subsequent sales to  
3 the time they were either suspended or terminated, correct?

4 A. Correct.

5 Q. And everything in this document, 1232A with the highlights,  
6 this represents and reflects that between 2013 and 2017, all of  
7 those actions, either suspensions or termination, were taken by  
8 the company, RDC, correct?

9 A. That's what the document appears to show.

10 Q. When I say it was taken by RDC, we are talking about RDC  
11 the company, not specifically Larry Doud, correct?

12 A. I don't know.

13 Q. Okay. But I believe you've indicated that this reflects  
14 either suspensions or terminations by RDC. Correct?

15 A. Correct.

16 Q. All right. So now, just if we can, your Honor, just to go  
17 through it.

18 Amato Pharmacy, April of 2013, there was a red flag  
19 suspension. Correct?

20 A. Yes.

21 Q. Total Care Pharmacy April 25, 2013, a red flag suspension,  
22 correct?

23 A. Yes.

24 Q. Total Care Pharmacy Crosby red flag suspension April 25,  
25 2013. Correct?

Mlr3dou5

Fiore - Cross

1 A. Yes.

2 Q. Specialty Care Pharmacy, Inc. red flag suspension April 25,  
3 2013, correct?

4 A. Yes.

5 Q. Medical Center Pharmacy, Inc. red flag suspension April 25,  
6 2013, right?

7 A. Yes.

8 Q. And you've put this highlight that reflects that, based on  
9 your analysis you saw, that some time subsequent to these  
10 pharmacies' suspensions, they were able to purchase additional  
11 controlled substances, correct?

12 A. Correct.

13 Q. And you don't know what happened between the time of the  
14 suspension and the subsequent time that they were permitted to  
15 order opioids again. You don't know what RDC or any of its  
16 employees did to investigate any of these pharmacies, correct?

17 A. No, I don't.

18 Q. Now, let's go to the next one here. Main Avenue Pharmacy.  
19 This doesn't have the highlight. Correct?

20 A. Correct.

21 Q. And this shows termination of RDC CS ordering privileges  
22 July 24, 2013. And there is no highlight there. What does  
23 that mean?

24 A. That means that there were no sales of controlled  
25 substances after July 24 of 2013.

Mlr3dou5

Fiore - Cross

1 Q. So after it's indicated they were terminated, that's the  
2 end of any purchases, correct?

3 A. Correct.

4 Q. Then we go to Plainfield Pharmacy. That also shows  
5 termination of RDC controlled substance ordering privileges  
6 August 6, 2013. Correct?

7 A. Correct.

8 Q. And being it's not highlighted, is your answer the same  
9 that after it was terminated by RDC, they didn't order anymore,  
10 right?

11 A. Correct.

12 Q. Now then we have K R D Pharmacy, and there, you said this  
13 was one I think of the two where you said there was a  
14 termination of RDC controlled substances ordering privileges,  
15 August 28, 2013. Correct?

16 A. Yes.

17 Q. And as you sit here, you can't say that between the time  
18 they were terminated and the time subsequently they were  
19 authorized to purchase again, you don't know if there was any  
20 investigation of K R D Pharmacy by RDC, correct?

21 A. That's right.

22 Q. You don't know if there were any conversations, any outside  
23 consultants who met with K R D Pharmacy after they were  
24 terminated, correct?

25 A. Correct.

Mlr3dou5

Fiore - Cross

1 Q. Were you told by the government when they prepared and  
2 prepped you for your testimony that the jury had already heard  
3 testimony that in instances when a pharmacy was either  
4 suspended or terminated, there were times that they were  
5 reinstated and permitted to order again? Did they tell you  
6 that the jury had already heard that?

7 MS. ROTHMAN: Objection.

8 THE COURT: Sustained.

9 Q. Are you aware, as you analyzed this, were you aware of the  
10 circumstances by which a pharmacy, even if it was suspended or  
11 even if it was terminated, that they could obtain authorization  
12 subsequently to purchase opioids again?

13 MS. ROTHMAN: Objection.

14 THE COURT: Overruled. You can answer.

15 A. The question was whether I was aware?

16 Q. Were you aware of the circumstances which would permit them  
17 and grant them authority to purchase again?

18 A. No.

19 Q. So now we look at AJ Family Pharmacy red flag suspension  
20 November 25, 2013.

21 Neighbor RX Pharmacy at Pearl River red flag  
22 suspension December 9, 2013.

23 Wellness Pharmacy High Falls red flag suspension  
24 December 18, 2013.

25 And Casey's Prescription Pad red flag suspension

Mlr3dou5

Fiore - Cross

1 April 22, 2014.

2 Correct?

3 A. Correct.

4 Q. And again, the same question, without going through it  
5 again. Fair to say you don't know what, if anything, was done  
6 by RDC after the suspension that led them to sell opioids  
7 again, correct?

8 A. That's correct.

9 Q. Now we go down to AJ Family Pharmacy termination of RDC CS  
10 ordering privileges dated June 26, 2014. Correct?

11 A. Correct.

12 Q. And that is not highlighted, which means that there is no  
13 subsequent sales, right?

14 A. Correct.

15 Q. Now we have Greenwich termination of RDC controlled  
16 substances ordering privileges September 1, 2014. And that one  
17 is highlighted, correct?

18 A. Correct.

19 Q. And fair to say your answer would be the same, you don't  
20 know what, if anything, was done by RDC that led to them being  
21 reinstated for purchases, correct?

22 A. Correct.

23 Q. Now we have Stanton & Negley, red flag suspension  
24 September 8, 2014.

25 Austin Chemist termination of RDC CS ordering



Mlr3dou5

Fiore - Cross

1 privileges, September 23, 2014. And that one is not  
2 highlighted. Austin Chemist. So that means that once they  
3 were terminated, couldn't buy again, right?

4 A. At least they didn't, correct.

5 Q. Okay. And in fact, that means that RDC didn't permit them  
6 to purchase again, correct?

7 A. Correct.

8 Q. You are not saying that Larry Doud had any involvement in  
9 that, you don't know anything involving any of this list  
10 involving Larry Doud, correct?

11 MS. ROTHMAN: Objection, compound.

12 THE COURT: Overruled. You can answer.

13 A. No, I don't know.

14 Q. Then we have All Care Pharmacy red flag suspension  
15 December 8, 2014.

16 Coatesville Pharmacy red flag suspension by RDC  
17 12/31/2014.

18 Cuidamed Pharmacy red flag suspension January 21, now  
19 we're into 2015, correct?

20 A. Correct.

21 Q. Mt. Airy termination of RDC CS ordering privileges May 5,  
22 2015. Correct?

23 A. Correct.

24 Q. Mt. Airy, there is no highlight there, which means once  
25 they were terminated, no more purchases, correct?

Mlr3dou5

Fiore - Cross

1 A. Correct.

2 Q. Wellness Pharmacy High Falls again, red flag suspension  
3 May 15, 2015. Right?

4 A. Yes.

5 Q. Now, what's interesting there, we had already mentioned  
6 Wellness Pharmacy High Falls up above. Right?

7 A. Yes.

8 Q. Right. That's account number 4161. Wellness Pharmacy High  
9 Falls. You told the jury there was a red flag suspension  
10 December 18, 2013.

11 Is it fair to say it appears after their suspension,  
12 something happened to reinstate them, putting them in a  
13 position to purchase again which led to a suspension on May 15,  
14 2015, correct?

15 MS. ROTHMAN: Objection, your Honor.

16 THE COURT: Sustained. He wouldn't know that.

17 MR. GOTTLIEB: I'm sorry, Judge?

18 THE COURT: He wouldn't know that.

19 Q. Then we have Kewan Pharmacy, LLC, suspension, refusal of  
20 onsite visit May 27, 2015.

21 Abigail's Pharmacy Corp red flag suspension July 21,  
22 2015. Correct?

23 A. Yes.

24 Q. And again, you have no knowledge about what led to them  
25 being able to purchase again, right?

Mlr3dou5

Fiore - Cross

1 A. Correct.

2 Q. Then we have three terminations, EZ Care pharmacy, ATA  
3 Pharmacy, Cedar Care Pharmacy. In August of 26, 2015,  
4 September 2, 2015, September 15, 2015. These three pharmacies,  
5 sir, your records show were terminated, no subsequent  
6 purchases, right?

7 A. Correct.

8 Q. Then we have Organix a red flag suspension October 20,  
9 2015.

10 And then we go, you were asked about The Chemist Shop  
11 termination of RDC CS ordering privileges, November 18, 2015.

12 Prime Health, Inc. termination of RDC CS ordering  
13 privileges November 18, 2015.

14 Poplar Pharmacy Inc. termination of RDC CS ordering  
15 privileges November 23, 2015.

16 Sir, those three pharmacies aren't highlighted which  
17 means end of story, they were not able to purchase again,  
18 right?

19 A. Correct.

20 Q. Then we go to ProHealth Pharmacy, Inc. red flag suspension  
21 December 28, 2015.

22 Toms River Pharmacy red flag suspension January 4,  
23 2016.

24 Kingsway Pharmacy red flag suspension February 26,  
25 2016.

Mlr3dou5

Fiore - Cross

1 And then we come to two more terminations. Vital  
2 Drugs, termination of RDC CS ordering privileges March 17,  
3 2016. And Super Star Pharmacy termination of RDC CS ordering  
4 privileges, March 17, 2016. And those two pharmacies are also  
5 included among -- it's not highlighted, which means once they  
6 were terminated, end of story, no more purchases, right?

7 A. Correct.

8 Q. And then we have Sheely's red flag suspension May 23, 2016.

9 Lake Carmel Pharmacy red flag suspension May 26, 2016.

10 And it ends on this exhibit, which comes from the  
11 period of time 2013 to 2017, that was included in the defense  
12 exhibit, it ends with Allerton Park termination of RDC CS  
13 ordering privileges August 11, 2016. There is no highlight  
14 there, correct?

15 A. Correct, there is no highlight.

16 Q. And once it was terminated, no record of any subsequent  
17 purchases, correct?

18 A. Correct.

19 Q. You know, can I ask you, you know when you were given  
20 documents by the government to analyze, you were given the  
21 documents that showed the terminations and suspensions  
22 beginning in 2017 until 2020, correct?

23 A. I was asked to analyze the ones 2016 and prior.

24 Q. So if we just break that down. I recall that being your  
25 testimony. But you were given the document, the government

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Fiore - Cross

1 document that only began in 2017 to 2020, correct?

2 A. The other document that began in 2017, no.

3 Q. Withdrawn. That was inartfully stated.

4 You were given this spreadsheet that included  
5 everything beginning in 2013 that went until 2020, correct?

6 A. Correct.

7 Q. All right. So, for those pharmacies you did see, beginning  
8 in 2017, there also was a list of a lot of pharmacies that were  
9 suspended and/or terminated, correct?

10 A. Correct.

11 Q. And were you asked to look at those pharmacies beginning in  
12 2017 to see if after they were suspended or terminated, whether  
13 or not they subsequently were authorized to purchase again?

14 A. I was not asked to analyze that, right.

15 Q. So you are not able to say whether or not the information  
16 beginning in 2017 until 2020, you are not in a position to say  
17 whether or not that information is accurate or not accurate,  
18 correct?

19 A. Which information is accurate?

20 Q. Everything beginning in 2017 down to 2020 that was included  
21 only in the government's exhibit, you are not able to say  
22 whether or not that information was accurate?

23 MR. ROOS: Objection. It is also in the defense  
24 exhibit. He's misstating.

25 THE COURT: Overruled. That's not a basis for an

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Fiore - Redirect

1 objection.

2 Mr. Gottlieb, do you have anything further?

3 MR. GOTTLIEB: May I just check my notes, your Honor.

4 Thank you. Your Honor, I have nothing further.

5 THE COURT: Thank you.

6 Ms. Rothman, do you have any further questions?

7 MS. ROTHMAN: Just a few, your Honor. Thank you.

8 REDIRECT EXAMINATION

9 BY MS. ROTHMAN:

10 Q. Good afternoon again.

11 Mr. Fiore, just so everyone is clear, Government  
12 Exhibit 278, the one that Mr. Gottlieb showed you, and  
13 Government Exhibit 1232A, that one pager with the highlighting,  
14 they have the same list as Defense Exhibit 82, right?

15 A. Correct, for 2016 and prior.

16 Q. And 1232A, Government Exhibit 1232A, is just an analysis of  
17 whether there is a sale after the listed date, right?

18 A. Correct.

19 Q. Sitting here today, do you know whether RDC actually  
20 stopped and restarted selling, or if the defense exhibit is  
21 just inaccurate?

22 MR. GOTTLIEB: Objection as to the form.

23 A. Can you repeat that, please?

24 THE COURT: He can answer the question. Everybody  
25 knows the answer is going to be "no."

Mlr3dou5

Fiore - Redirect

1 Q. Let's pull up Government Exhibit 1232A.

2 THE COURT: Do you want an answer to that previous  
3 question?

4 MS. ROTHMAN: In case he needs to look at it.

5 Q. The simple question is this: The dates you see here,  
6 Mr. Fiore, which are from Defense Exhibit A82, do you know if  
7 RDC actually stopped selling on that date or if the defense  
8 exhibit is just inaccurate?

9 A. No, I don't know.

10 Q. Let's do one other thing. We can take that down and pull  
11 up Government Exhibit 913, please. Just to look at a few of  
12 the terminations.

13 Can we look at page 37. This is one of the examples  
14 of the termination that Mr. Gottlieb asked you about.

15 How much were the sales to Poplar Pharmacy for  
16 oxycodone?

17 A. About \$2,200.

18 Q. And let's go to slide 36, another terminated pharmacy. How  
19 much were the sales of oxycodone?

20 A. \$41.

21 Q. Let's go to slide 34, Mt. Airy Pharmacy. How much were the  
22 sales of oxycodone?

23 A. About 8,300.

24 Q. Let's go to slide 31, Kingston Pharmacy.

25 How much were the sales of oxycodone?

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1 A. About 5,700.

2 Q. Let's go to the first page, Sheely's. How much were the  
3 sales of oxycodone?

4 A. Approximately 1.6 million.

5 Q. Let's go to slide eight, please. ProHealth. How much were  
6 the sales of oxycodone?

7 A. Approximately 1.8 million.

8 Q. A pharmacy that RDC kept selling to?

9 A. Correct.

10 MS. ROTHMAN: No further questions.

11 THE COURT: Any further questions?

12 MR. GOTTLIEB: No, your Honor.

13 THE COURT: Thank you, sir. You can step down.

14 (Witness excused)

15 THE COURT: Anything further by the government?

16 MS. ROTHMAN: I don't believe so, your Honor.

17 THE COURT: Anything further at this time by the  
18 defense?

19 MR. GOTTLIEB: No, your Honor.

20 THE COURT: Ladies and gentlemen, we are going to  
21 adjourn for the weekend. If there is any further evidence to  
22 be presented, we'll do it first thing Monday morning. If there  
23 is nothing further, as I just indicated, we will have the  
24 summations and closing arguments as we call them of the  
25 lawyers. We are going to be here earlier, probably about 9:15.



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1 I am going to ask you to be here before 9:45 so we can start  
2 fairly early so I can give the parties a full opportunity to  
3 argue their cases.

4 Don't discuss the case, keep an open mind. I'll see  
5 you Monday morning at 9:45 and hopefully at that point in time  
6 we'll be able to begin with the summations. Have a good  
7 weekend.

8 (Jury excused)

9 THE COURT: Mr. Gottlieb, technically I'll consider  
10 your motion renewed at this time. At the close of the  
11 government's case, and at the close of all testimony, I'll  
12 consider that motion, those motions to be made.

13 MR. GOTTLIEB: Thank you.

14 THE COURT: So, is there anything else we need to  
15 address at this point in time? You want to talk any further  
16 about the jury instructions or any other issues?

17 MR. ROOS: Three very brief matters from us. So  
18 number one, I think you indicated tomorrow you'd like letters  
19 to the extent we have anything about the jury instruction. Is  
20 there a time by which you'd like them?

21 THE COURT: I'd like to have them before 2 p.m.  
22 tomorrow if I can.

23 MR. GOTTLIEB: On the jury charge?

24 THE COURT: Yes. And then if you want to respond,  
25 I'll start looking at those as soon as I get them. If you want

1 to respond by noon Saturday. And then I'll work on it, and  
2 then we'll talk about it first thing Monday morning. If I  
3 haven't already just gone ahead and incorporated your  
4 suggestions. I think that's reasonable. You want any other  
5 time frame than that?

6 MR. ROOS: That's fine.

7 One other thing. I guess, so my understanding is  
8 since the pandemic, many of the trials, the exhibits have been  
9 sent back to the jury have been put on to a drive and loaded on  
10 to the computer for them as opposed to paper. I think the  
11 district then sort of relaxed that idea. But then with the  
12 variant spike, it kind of went back to that.

13 So I was wondering if your Honor has a thought -- if  
14 it's loading data that's no problem. If it's printing, our  
15 paralegal will need to print a complete set.

16 THE COURT: I'll have to check to see what the  
17 protocols are for now. Obviously my preference would be, if  
18 it's safe, if they want a particular exhibit, to give them a  
19 particular exhibit rather than having them to try search for an  
20 exhibit, particularly given the numerous exhibits, by giving  
21 them a drive. Let me find out what that protocol is.

22 In what way are you now prepared to do that?

23 (Continued on next page)  
24  
25

M1RBDOU6

1 MR. ROOS: Well, two questions: One is, if it's your  
2 Honor's practice to just give them -- not send all the exhibits  
3 back and give them particular exhibits, I think that makes it a  
4 little bit easier.

5 THE COURT: That is my practice. My practice is not  
6 to send the exhibits in when I send them to deliberate. If you  
7 look at my instructions, I give them instructions, if they want  
8 any particular exhibit, they should tell us which exhibits they  
9 want. And once the parties agree that that's the exhibit  
10 they're asking for, I will send it directly in, but I do not  
11 send unmasked all the exhibits in this case. I like to have  
12 the jury focused on what they think at the time is relevant to  
13 their deliberations.

14 MR. ROOS: I mean, I think, you know, obviously the  
15 easiest thing for the paralegals is just to put it on a disk,  
16 but obviously before the pandemic, we were doing printing. If  
17 that's your Honor practice, I think we can print a set and just  
18 have them ready.

19 THE COURT: I would have them ready. Maybe if you  
20 could even -- and I'll see if we have any available -- if you  
21 can get some plastic sleeves to put the documents in. That  
22 might be useful, that might be helpful for safety. Otherwise,  
23 I think that it depends how many documents they ask for, but I  
24 just don't think it's particularly conducive to effective jury  
25 deliberations to give them a disk with a thousand exhibits on

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1 it.

2 MR. ROOS: No problem. One other thing related to the  
3 exhibits is, some of them, as you've seen, are spreadsheets.  
4 Spreadsheets like the ones we were just going through I think  
5 are the type that could be printed. There are others like some  
6 the experts testified to that are sales data. I'm kind of  
7 guessing that the jury is not going to ask for the underlying  
8 sales data, so we're not going to print it if that's okay with  
9 your Honor. We want to see the massive thing, then we can  
10 figure it out.

11 THE COURT: As long as we can do it in a timely manner  
12 if they request something and we can respond to them quickly  
13 up.

14 MR. JANEY: Just on that, some of the sales data we're  
15 talking about as a practical matter takes like 10 minutes to  
16 load. It may be worth conferring because if we get a note  
17 requesting some of the underlying sales data, your Honor, quite  
18 frankly, I'm not sure, as a practical matter, how we even show  
19 it to them.

20 As an example, there are these enormous CSV files that  
21 both parties have that we obtained from RDC. It practically  
22 requires a program to run them.

23 THE COURT: Well, my approach with regard to those  
24 issues is to -- if we confront those kinds of problems, we  
25 bring the jury out, tell them what the problem is and have them

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1 either refocus their specific request or have them tell us,  
2 yes, that's what we want. We want the ten-inch stock of  
3 documents so we can go through it. That's their right. But  
4 hopefully if we get to the point where it's something awkward  
5 like that, we can bring them out, explain it to them, have them  
6 go back and give us a particular note as to whether they really  
7 want that or whether they're looking for something in  
8 particular.

9 MR. ROOS: A similar type thing, I had a few trials  
10 where the Court asked the government to provide notepads for  
11 the jurors. I don't know if that's --

12 THE COURT: We'll take care of all of that. We will  
13 have pencils and pads for the jury in the jury room.

14 Anything else right now?

15 Have a good weekend. I will see you Monday morning  
16 9:15. I'll keep a look at my email to see whether or not you  
17 submit anything to me.

18 Take care.

19 (Adjourned to January 31, 2022, at 9:15 a.m.)  
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22  
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